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# Secular and Ecclesiastical Justice in Late Anglo-Saxon England

By Nicole Marafioti

In the early eleventh century, the homilist and legislator Wulfstan, archbishop of York (r. 1002–23), sought to explain the historical relationship between royal power and ecclesiastical justice in England.<sup>1</sup> He did so by celebrating the legal policies of earlier kings:

Hig gesetton woruldllice steora . . . for ðam þingum þe hig wistan, þæt hig elles ne mihton manegum gesteoran, ne fela manna nolde to godcundre bote elles gebugan, swa hy sceolde; ⁊ þa woruldbot hig gesetton gemæne Criste ⁊ cynge, swa hwar swa man nolde godcunde bote gebugan mid rihte to bisceopa dihte.

[They established earthly punishments because they knew that they would be unable to control many people otherwise; and otherwise, many people would not wish to submit to penance as they should. And they established earthly compensation to be split between Christ and the king, wherever a person would not rightly submit to penance according to the bishops' decree.<sup>2</sup>]

This passage identifies two objectives behind judicial punishment: to control the population and enable lawbreakers to repent of their sins. When royal power was deployed correctly, according to Wulfstan's logic, offenders would face consequences in both the secular and the religious spheres. First, a convicted perpetrator would be

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<sup>1</sup> For Wulfstan's career and influence, see especially Dorothy Whitelock, "Archbishop Wulfstan, Homilist and Statesman," *Transactions of the Royal Historical Society*, 4th ser., 24 (1942): 25–45; Patrick Wormald, "Wulfstan (d. 1023)," *Oxford Dictionary of National Biography* (Oxford, 2004), <http://www.oxforddnb.com/view/article/30098> (last accessed 31 October 2017); Patrick Wormald, "Archbishop Wulfstan and the Holiness of Society," in *Legal Culture in the Early Medieval West: Law as Text, Image, and Experience* (London, 1999), 225–51; Wormald, *The Making of English Law: King Alfred to the Twelfth Century*, vol. 1, *Legislation and Its Limits* (Oxford, 1999), 449–65; Andrew Rabin, ed., *The Political Writings of Archbishop Wulfstan of York* (Manchester, 2015), 1–44; and the essays in Matthew Townend, ed., *Wulfstan, Archbishop of York: Proceedings of the Second Alcuin Conference*, *Studies in the Early Middle Ages* 10 (Turnhout, 2004).

<sup>2</sup> All Old English and Latin translations are my own, unless otherwise noted. This document is conventionally known as *The Peace of Edward and Guthrum*, and the quotation is taken from the second clause of the prologue; the Old English is edited by Felix Liebermann, *Die Gesetze der Angelsachsen*, 3 vols. (Halle, 1903), 1:129–31. Although it purports to be a treaty of the early tenth century, *Edward and Guthrum* was composed by Wulfstan, likely between 1002 and 1008; Dorothy Whitelock, "Wulfstan and the So-Called Laws of Edward and Guthrum," *English Historical Review* 56 (1941): 1–21; Wormald, *Making of English Law*, 389–91; Jay Paul Gates, "Preaching, Politics, and Episcopal Reform in Wulfstan's Early Writings," *Early Medieval Europe* 23 (2015): 93–116, at 109–10.

liable for “earthly punishments” (*woruldlice steora*) for his breach of peace or violation of royal law. Second, he would have to undertake penance for his sins—literally, “spiritual compensation” (*godcunde bote*)—according to episcopal instruction; if he refused, further “earthly compensation” (*woruldbot*) would be exacted on Christ’s behalf for breaking the rules of the earthly church. This schema takes for granted that two types of justice would be deployed in tandem. Secular authorities would judge an offender for his temporal violation and determine the appropriate punishment or compensation, while ecclesiastical authorities would judge an offender for his sin and determine the appropriate penance. Even though royal power might be used to enforce secular and spiritual law simultaneously, this passage assumes that separate judgments would be issued by lay and religious authorities, each operating within their own jurisdiction.

Wulfstan’s understanding of secular and ecclesiastical justice is noteworthy because there is scarce evidence of a division between these systems in the Anglo-Saxon period. Traditional wisdom long held that “there was no sort of distinction between the lay and the ecclesiastical jurisdiction” before the 1066 Norman Conquest.<sup>3</sup> Instead, their separation has been conventionally dated to the reign of William the Conqueror (r. 1066–87), who was purportedly distressed by the fact that English bishops were rendering ecclesiastical judgments in secular courts. To remedy this situation, William decreed:

Nullus episcopus vel archidiaconus de legibus episcopalibus amplius in hundret placita teneant, nec causam que ad regimen animarum pertinet ad iudicium secularium hominum adducant. Sed quicumque secundum episcopales leges de quacumque causa vel culpa interpellatus fuerit ad locum quem ad hoc episcopus elegerit et nominaverit veniat, ibique de causa vel culpa sua respondeat, et non secundum hundret, sed secundum canones et episcopales leges rectum Deo et episcopo suo faciat. . . . Hoc etiam defendo et mea auctoritate interdico, ne ullus vicecomes aut prepositus seu minister regis, nec aliquis laicus homo de legibus que ad episcopum pertinet se intromittat.

[No bishop or archdeacon shall henceforth hold pleas relating to episcopal laws in the [secular] hundred court, nor shall they bring to the judgment of laymen any matter which concerns the rule of souls. But anyone cited under the episcopal laws shall come to the place which the bishop shall choose, and there he shall plead his case, or answer for his offense. He shall not be tried according to the law of the hundred court, but he shall submit to the justice of God and his bishop in accordance with the canons and the episcopal laws. . . . I also forbid any sheriff or reeve or official of the king or any layman to interfere with the laws which pertain to the bishop.<sup>4</sup>]

Certainly, the separation of secular and ecclesiastical courts became increasingly pronounced on both sides of the Channel during William’s reign.<sup>5</sup> The 1080 Coun-

<sup>3</sup> William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford, 1765–69; repr. Buffalo, 1992), 3:61.

<sup>4</sup> The text is edited (with discussion of dating) by David Bates, *Regesta regum Anglo-Normannorum: The Acta of William I (1066–1087)* (Oxford, 1998), 140–42, no. 128; the translation is adapted from David C. Douglas and George W. Greenaway, *English Historical Documents*, vol. 2, 1042–1189, 2nd ed. (London, 1981), 647–48, no. 79. The writ is undated but likely originated in the 1070s or 1080s.

<sup>5</sup> This initiative has been attributed to Archbishop Lanfranc of Canterbury (r. 1070–89), whose efforts helped lay the groundwork for an autonomous system of episcopal justice in England after the Conquest: William Stubbs, *The Constitutional History of England in Its Origin and Development*,

cil of Lillebonne, for example, affirmed the distinction between these two brands of justice, even as it proclaimed the king's ultimate authority over both.<sup>6</sup> Despite Norman authorities' reforming rhetoric, however, recent scholarship on English legal culture has revealed a more gradual process of adaptation across the eleventh century, with Anglo-Saxon judicial and administrative frameworks providing vital support for post-Conquest initiatives.<sup>7</sup> The fact that Wulfstan differentiated between secular and religious justice in the early 1000s indicates that William's division of English courts was not as novel as it purported to be.

Nevertheless, scholars continue to view William's reign as a turning point for jurisdictional divisions, and indeed, when read backward from the Norman and Angevin periods, Anglo-Saxon royal law appears to make very little distinction between religious and secular justice.<sup>8</sup> Criminal and sinful offenses were frequently addressed together in legislation of the late tenth and early eleventh centuries, and this has been taken to mean that the two were conflated—in the minds of lawmakers, at least—into a broad category of “wrong.”<sup>9</sup> Still, there is little dispute that the responsibility to reconcile sinners fell ultimately to the clergy, rather than to secular magnates, since ecclesiastical jurisdiction over sin and its remedies is attested by a range of Anglo-Saxon penitential literature and religious regulations.<sup>10</sup> Yet this material is rarely regarded as evidence for a cohesive system of ecclesiastical justice. On the Continent, religious authorities showed increasing concern with jurisprudence across the tenth and eleventh centuries, delineating ecclesiastical jurisdictions

3 vols., 6th ed. (Oxford, 1874–78), 1:307–9; Frank Stenton, *Anglo-Saxon England*, 3rd ed. (Oxford, 1971), 669–70; H. E. J. Cowdrey, *Lanfranc: Scholar, Monk, and Archbishop* (Oxford, 2003), 132–34; Edwin Maxey, “The Ecclesiastical Jurisdiction in England,” *Michigan Law Review* 3 (1905): 360–64, at 360–61; Colin Morris, “William I and the Church Courts,” *English Historical Review* 82 (1967): 449–63; F. Donald Logan, *Excommunication and the Secular Arm in Medieval England: A Study in Legal Procedure from the Thirteenth to the Sixteenth Century* (Toronto, 1968), 17–20.

<sup>6</sup> The canons of the Council of Lillebonne are recorded by Orderic Vitalis, *The Ecclesiastical History* 5.5, ed. Marjorie Chibnall, 6 vols. (Oxford, 1972), 3:24–37. See also Charles Homer Haskins, *Norman Institutions* (Cambridge, MA, 1918), 30–39; Raymonde Foreville, “The Synod of the Province of Rouen in the Eleventh and Twelfth Centuries,” in *Church and Government in the Middle Ages: Essays Presented to C. R. Cheney on his 70th Birthday*, ed. C. N. L. Brooke, D. E. Luscombe, G. H. Martin, and Dorothy Owen (Cambridge, UK, 1976), 19–39, at 26–27; David C. Douglas, *William the Conqueror* (Berkeley, 1964), 331–36; Pierre Chaplais, “Henry II's Reissue of the Canons of the Council of Lillebonne of Whitsun 1080 (?25 February 1162),” *Journal of the Society of Archivists* 4 (1973): 627–32; Morris, “William I and the Church Courts,” 451–53; Cowdrey, *Lanfranc*, 132.

<sup>7</sup> See especially Richard Helmholz, *Oxford History of the Laws of England*, vol. 1, *Canon Law and Ecclesiastical Jurisdiction from 597 to the 1640s* (Oxford, 2004), 61–62, 108–11.

<sup>8</sup> Frank Barlow is a notable exception to this scholarly tendency, for his nuanced discussion of secular and ecclesiastical jurisdictions in eleventh-century England illuminates the various ways in which these spheres were distinguished: see *The English Church 1000–1066*, 2nd ed. (London, 1979), 137–53, 232–76, with an evaluation of William's writ at 275–76. More recently, the differentiation of secular and ecclesiastical law in eighth-century Northumbria has been examined by Bryan Carella, “The Earliest Expression for Outlawry in Anglo-Saxon Law,” *Traditio* 70 (2015): 111–43.

<sup>9</sup> Paul R. Hyams, “Does It Matter When the English Began to Distinguish Crime and Tort?,” in *Violence in Medieval Society*, ed. R. Kaeuper (Woodbridge, UK, 2000), 107–28, at 109–10; Helmholz, *Oxford History of the Laws of England*, 1:35–37.

<sup>10</sup> The sources for canonical collections, penitentials, and ecclesiastical law in Anglo-Saxon England are surveyed in Helmholz, *Oxford History of the Laws of England*, 1:27–40.

and establishing norms for administering episcopal justice. This trend has not been identified in England during this period, however, presumably because pre-Conquest royal law seems to integrate ecclesiastical and secular interests so closely.<sup>11</sup>

Accordingly, while processes of spiritual reconciliation have been well examined in the context of English religious ritual or high-level political activity, scholars have rarely approached them as judicial procedures in their own right.<sup>12</sup> Where Continental bishops employed ecclesiastical law and justice to proclaim their authority in the face of encroaching secular power, their English counterparts are known for their collaboration with laymen.<sup>13</sup> Episcopal participation in lawmaking is evident from the earliest Anglo-Saxon written legislation, which made protection for the church and clergy a priority, and it was not unusual for royal law codes to be drafted by a king's religious advisors.<sup>14</sup> Ecclesiastical councils appear to have become increasingly absorbed into royal assemblies in the ninth century, and tenth-century legislation refers repeatedly to the will of "the king and his councilors,"

<sup>11</sup> Sarah Hamilton, "Inquiring into Adultery and Other Wicked Deeds: Episcopal Justice in Tenth- and Early Eleventh-Century Italy," *Viator* 41 (2010): 21–44, identifies a similar lacuna in the historiography of tenth- and eleventh-century ecclesiastical justice in Italy. For examinations of the integration of secular and ecclesiastical interests in Anglo-Saxon law, see Wormald, *Making of English Law*, esp. 418–29, 449–65; Stefan Jurasinski, *The Old English Penitentials and Anglo-Saxon Law* (Cambridge, UK, 2015); Lisi Oliver, "Royal and Ecclesiastical Law in Seventh-Century Kent," in *Early Medieval Studies in Memory of Patrick Wormald*, ed. Stephen Baxter, Catherine E. Karkov, Janet L. Nelson, and David Pelteret (Farnham, UK, 2009), 97–112; Carole Hough, "Penitential Literature and Secular Law in Anglo-Saxon England," *Anglo-Saxon Studies in Archaeology and History* 11 (2000): 133–41; Catherine Cubitt, "Bishops and Councils in Late Saxon England: The Intersection of Secular and Ecclesiastical Law," in *Recht und Gericht in Kirche und Welt um 900*, ed. Wilfried Hartmann and Annette Grabowsky (Munich, 2007), 151–67; Allen J. Frantzen, *The Literature of Penance in Anglo-Saxon England* (New Brunswick, NJ, 1983), 124–27; Thomas Pollock Oakley, *English Penitential Discipline and Anglo-Saxon Law in Their Joint Influence* (New York, 1923).

<sup>12</sup> For ecclesiastical ritual, see, for example, Sarah Hamilton, "Rites for Public Penance in Late Anglo-Saxon England," in *The Liturgy of the Late Anglo-Saxon Church*, ed. Helen Gittos and M. Bradford Bedingfield (London, 2005), 65–103; Hamilton, "Remedies for 'Great Transgressions': Penance and Excommunication in Late Anglo-Saxon England," in *Pastoral Care in Late Anglo-Saxon England*, ed. Francesca Tinti (Woodbridge, UK, 2005), 83–105; Brad Bedingfield, "Public Penance in Anglo-Saxon England," *Anglo-Saxon England* 31 (2002): 223–55. For political perspectives, see, for example, Catherine Cubitt, "Individual and Collective Sinning in Tenth- and Eleventh-Century England: Penance, Piety and the Law," in *Religion und Politik im Mittelalter: Deutschland und England im Vergleich*, ed. Ludger Körntgen and Dominik Wassenhoven (Berlin, 2013), 51–70; Cubitt, "The Politics of Remorse: Penance and Royal Piety in the Reign of Æthelred the Unready," *Historical Research* 85 (2011): 1–14; Levi Roach, "Public Rites and Public Wrongs: Ritual Aspects of Diplomas in Tenth- and Eleventh-Century England," *Early Medieval Europe* 19 (2011): 182–203; Roach, "Penance, Submission and *deditio*: Religious Influences on Dispute Settlement in Later Anglo-Saxon England (871–1066)," *Anglo-Saxon England* 41 (2012): 343–71.

<sup>13</sup> For Continental practice, see Hamilton, "Episcopal Justice"; Hamilton, "Penance and Excommunication," 94; Morris, "William I and the Church Courts," 451–57; Greta Austin, "Jurisprudence in the Service of Pastoral Care: The *Decretum* of Burchard of Worms," *Speculum* 79/4 (2004): 929–59.

<sup>14</sup> An ecclesiastical focus is evident in the laws of Kentish kings Æthelberht (d. c. 616) and Wihtred (d. 725), as well as in those of the West Saxon king Ine (d. c. 726). Ecclesiastical authorship of royal law codes or influence over their production is attested throughout the pre-Conquest period: see Oliver, "Royal and Ecclesiastical Law"; Lisi Oliver, *The Beginnings of English Law* (Toronto, 2002), 14–20, 83–85, and 164–80; Wormald, *Making of English Law*, esp. 299–300, 310, 330–39, and 449–65.

emphasizing the role of bishops in shaping written law.<sup>15</sup> While the line between secular and ecclesiastical offices may have been sharply drawn among participants in these processes, the legal and political activities of religious and lay magnates must have looked very much alike. Moreover, the absence of clearly defined judicial institutions—as well as the shared vocabulary used to describe religious and earthly justice—has obscured how Anglo-Saxon authorities understood the differences between ecclesiastical and secular jurisdictions.<sup>16</sup> Although there is now wider agreement among scholars that these spheres were distinguished in some way, there has been little investigation of the precise relationship between them.<sup>17</sup>

The following discussion aims to illuminate some pre-Conquest attitudes toward secular and ecclesiastical justice. I will focus predominantly on the writings of Archbishop Wulfstan, with some reference to those of his contemporary, Abbot Ælfric of Eynsham (d. c. 1010), with whom he maintained a correspondence. These two ecclesiastics were among the most prolific authors of the later Anglo-Saxon period. Wulfstan was already known as a homilist when he became bishop of London in 996, and he continued to produce sermons after his elevation to the sees of York and Worcester in 1002. It was around this time that he was in contact with Ælfric, a homilist and monk of Cerne Abbey and, by 1005, abbot of Eynsham. At Wulfstan's request, Ælfric composed a series of Old English and Latin letters synthesizing points of canon law that would be especially pertinent to the work of an archbishop.<sup>18</sup> These letters were copied or adapted in several compilations associated with Wulfstan: they were integrated into his collections of canon law and seem to have inspired sermons and other tracts in his “commonplace book” manuscripts.<sup>19</sup> Wulfstan's man-

<sup>15</sup> Cubitt, “Bishops and Councils”; Cubitt, “Individual and Collective Sinning,” 59–60, 69–70; Levi Roach, *Kingship and Consent in Anglo-Saxon England, 871–978* (Cambridge, UK, 2013), esp. 104–21. Bishops and other ecclesiastics are explicitly referred to as legislative advisors throughout the tenth and eleventh centuries, as well as in earlier Anglo-Saxon law codes: see *Wittræd* prol.; *Ine* prol.; *I Æthelstan* prol.; *II Æthelstan* epilogue; *III Æthelstan* prol.; *VI Æthelstan* prol.; *I Edmund* prol.; *II Edmund* prol.; *III Edmund* prol.; *V Æthelred* prol.; and *VI Æthelred* prol. The advice of royal counselors in lawmaking is cited in *IV Æthelstan* 1; *V Æthelstan* prol. 1; *II Edgar* prol.; *IV Edgar* 1; *I Æthelred* prol.; *II Æthelred* prol.; *III Æthelred* prol.; *VIII Æthelred* prol.; *IX Æthelred* prol.; *X Æthelred* 2; *Cnut* 1018 prol.; *I Cnut* prol.; *II Cnut* prol. All laws are cited by their conventional titles and chapter divisions, following Liebermann, *Gesetze*, above, n. 2; and A. G. Kennedy, “Cnut's Law Code of 1018,” *Anglo-Saxon England* 11 (1982): 57–81.

<sup>16</sup> The shared vocabulary for ecclesiastical and secular justice in pre-Conquest England is discussed further below; and see also the discussion of early medieval Latin vocabulary for wrongdoing in Hyams, “Crime and Tort,” 109–10, 115.

<sup>17</sup> For example, Richard Helmholz, *Oxford History of the Laws of England*, 1:57, acknowledges that some distinction must have existed between the secular and ecclesiastical spheres; however, when it comes to specific details, “beyond recognizing that the division existed in the minds of the Anglo-Saxons, it may be wiser to remain silent.” Compare Barlow, *English Church*, 137–53, 255–59 (and above, n. 8); Cowdrey, *Lanfranc*, 120–43.

<sup>18</sup> Ælfric's pastoral letters and their context are discussed by Peter Clemoes, “Supplement to the Introduction,” in Bernhard Fehr, *Die Hirtenbriefe Ælfrics in Altenglischer und Lateinischer Fassung*, rev. ed. (Darmstadt, 1966), cxxvii–cxlviii; Joyce Hill, “Monastic Reform and the Secular Church: Ælfric's Pastoral Letters in Context,” in *England in the Eleventh Century: Proceedings of the 1990 Harlaxton Symposium*, ed. Carola Hicks (Stamford, 1992), 103–17; J. E. Cross and Andrew Hamer, eds., *Wulfstan's Canon Law Collection* (Cambridge, UK, 1999), 17–22. See further below, n. 44.

<sup>19</sup> Wulfstan's so-called commonplace book is a collection of texts—reproduced in different permutations across several manuscripts—compiled by or for Wulfstan, comprised of the archbishop's *Speculum* 94/3 (July 2019)



uscript compilations also included Old English laws, with decrees of earlier Anglo-Saxon kings preserved alongside the archbishop's own legislation, composed between 1008 and 1023 for the West Saxon king Æthelred II (r. 978–1016) and the Danish conqueror Cnut (r. 1016–35). The religious principles articulated in various “commonplace book” texts informed Wulfstan's approach to royal lawmaking, and it is possible to identify an increasingly cohesive legal ideology—which linked national prosperity to adherence to Christian principles—as his legislative career progressed.

The hazy boundaries between secular and ecclesiastical concerns in Wulfstan's manuscripts, as well as the religious rhetoric that dominates his royal laws, appear to emblemize the all-encompassing approach to justice typically associated with the pre-Conquest period.<sup>20</sup> His dual role as “homilist and statesman” placed him in an ideal position to infuse secular regulation with religious sensibilities.<sup>21</sup> His impulse to align earthly law with divine will emerges clearly in his writings, and the religious priorities in his royal legislation aimed to shape a “holy society” pleasing to God.<sup>22</sup> This does not mean, however, that Wulfstan saw no distinction between royal and religious law, or that he sought to conflate secular and ecclesiastical justice. On the contrary, Wulfstan was clear that religious authorities—especially bishops—held judicial rights and responsibilities distinct from their lay counterparts'. To some extent, this mirrors the approach employed by Wulfstan's contemporaries across the Channel: recent studies of tenth- and eleventh-century Continental canon law compilations reveal an increasing interest in episcopal justice and ecclesiastical jurisdictions, distinct from the secular arm.<sup>23</sup> Although Wulfstan consistently urged cooperation among secular and religious authorities, I propose that he joined his

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own writings alongside texts by other authors. For the contents and significance of these manuscripts, see especially Dorothy Bethurum, “Archbishop Wulfstan's Commonplace Book,” *PMLA* 57 (1942): 916–29; Hans Sauer, “The Transmission and Structure of Archbishop Wulfstan's ‘Commonplace Book,’” in *Old English Prose: Basic Readings*, ed. Paul E. Szarmach (New York, 2000), 339–93; Christopher A. Jones, “Two Composite Texts from Archbishop Wulfstan's ‘Commonplace Book’: The *De ecclesiastica consuetudine* and the *Institutio beati Amalarii de ecclesiasticis officiis*,” *Anglo-Saxon England* 27 (1998): 233–71; Michael D. Elliot, “Wulfstan's Commonplace Book Revised: The Structure and Development of ‘Block 7,’ on Pastoral Privilege and Responsibility,” *Journal of Medieval Latin* 22 (2012): 1–48; Wormald, *Making of English Law*, 213–19. Versions of Wulfstan's canon law collection, also known as the *Collectio Wigorniensis* or the *Excerptiones pseudo-Ecgberhti*, are included in various “commonplace book” manuscripts: this material is edited by Cross and Hamer, *Wulfstan's Canon Law*; Michael D. Elliot, “Canon Law Collections in England ca 600–1066: The Manuscript Evidence” (PhD diss., University of Toronto, 2013), 169–88, 809–1111.

<sup>20</sup> Wormald, *Making of English Law*, esp. 339–49, 363–65, and 449–65; M. K. Lawson, “Archbishop Wulfstan and the Homiletic Element in the Laws of Æthelred II and Cnut,” *English Historical Review* 107 (1992): 565–86.

<sup>21</sup> The epithet is Dorothy Whitelock's: Whitelock, “Archbishop Wulfstan, Homilist and Statesman.”

<sup>22</sup> The phrase is Patrick Wormald's: Wormald, “Archbishop Wulfstan and the Holiness of Society.” See also Wormald, *Making of English Law*, 449–65; Lawson, “Archbishop Wulfstan.”

<sup>23</sup> For Continental compilations, see, for example, Hamilton, “Episcopal Justice,” 36–40; Sarah Hamilton, *The Practice of Penance, 900–1050* (Woodbridge, UK, 2001), 45–50; Austin, “Jurisprudence in the Service of Pastoral Care”; Rob Meens, *Penance in Medieval Europe: 600–1200* (Cambridge, UK, 2014), esp. 140–89; Meens, “Penitentials and the Practice of Penance in the Tenth and Eleventh Centuries,” *Early Medieval Europe* 14 (2006): 7–21. Wulfstan's manuscripts are contextualized within this tradition by Patrick Wormald: see Wormald, *Making of English Law*, 456–57; Wormald, “Archbishop Wulfstan and the Holiness of Society,” 239–40.

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Continental counterparts in envisioning a sphere of ecclesiastical jurisdiction independent of secular control.

#### JURISDICTIONAL DIVISIONS AND ROYAL LAW

Wulfstan looked to England's past for models of good law and government. This impulse is clearest in his adaptation of clauses from previous kings' laws in his own codes for Æthelred and Cnut. Yet Wulfstan also regarded earlier legislation as a source for ideological principles whose implementation would restore the nation to its former glory. Accordingly, his reading of England's past legislation was a practical one: what made earlier rulers' laws successful? He provides one answer in his 1014 law code *VIII Æthelred*, in clause 36: "Wise wæran worldwitan, þe to godcundan rihtlagan woroldlaga settan, folce to steore, ⁊ Criste ⁊ cyninge gerihtan þa bote, þar man swa scolde manega for neode gewildan to rihte" (Wise were those earthly counselors who set earthly laws to divine law, to guide the people, and who adjudged compensation to Christ and the king—by which many people, by necessity, had to submit to justice).<sup>24</sup> This clause articulates a recurring theme in Wulfstan's legislation: that good earthly law must operate in both secular and ecclesiastical spheres, with the best legislators shaping their decrees to conform with divine will.<sup>25</sup> Later, the same law code praises kings Æthelstan (r. 924–39), Edmund (r. 939–46), and Edgar (r. 959–75) for having "God weorðodon ⁊ Godes lage heoldon ⁊ Godes gafel læstan, þa hwile þe hi leofodon" (honored God and held God's law and rendered God's offerings, as long as they lived), and these rulers' incorporation of penitential requirements in their legislation served as a model for Wulfstan.<sup>26</sup> His own assignment of double penalties—"compensation to Christ and the king"—continued this tenth-century tradition by requiring offenders to make amends to both religious and temporal authorities.<sup>27</sup> As clear as this binary division seems, however, Wulfstan's vocabulary in *VIII Æthelred* 36 blurs the line between secular and ecclesiastical interests. First, the Old English term *riht* (rendered above as "justice") encompasses a range of possible meanings, including moral virtue, righteous behavior, and lawful justice. This passage elides these concepts. With double penalties facilitating both religious and secular redemption, *riht* applies comfortably to both spheres and effaces the boundary between spiritual reha-

<sup>24</sup> Wulfstan makes similar points elsewhere in his corpus: see *Edward and Guthrum* prol. 2 (quoted above, 1 and n. 2); *Hadbot* 11; *Grið* 24; Dorothy Bethurum, *The Homilies of Wulfstan* (Oxford, 1957), 277, no. 21.

<sup>25</sup> Wulfstan indicates in other contexts that kings must rely on bishops' advice in order to align earthly legislation with divine law: Gates, "Preaching, Politics, and Episcopal Reform," 115–16.

<sup>26</sup> *VIII Æthelred* 43. Penance was prescribed in royal law with some regularity from the reign of Alfred (r. 871–99), whom Wulfstan acknowledged as a good lawmaker in *Edward and Guthrum* prol.; for Alfred's introduction of penitential requirements into royal law, see Frantzen, *Literature of Penance*, 124–27. Penance may also have been required in the laws of Wihtræd, promulgated in 696: Oliver, *Beginnings of English Law*, 154–55, 167–68; Oliver, "Royal and Ecclesiastical Law"; Frantzen, *Literature of Penance*, 79; but compare Hough, "Penitential Literature and Secular Law," 133–34. For Wulfstan's use of earlier Old English legislation, see Wormald, *Making of English Law*, 344, 352–66.

<sup>27</sup> See further below, n. 83.



bilitation and criminal punishment.<sup>28</sup> Second, *bot* generally refers to legal compensation in Anglo-Saxon law codes, but it was also the standard Old English term for penance.<sup>29</sup> In this clause, Wulfstan leaves the distinction vague: awarding *bot* to Christ could mean that earthly fines were to be rendered to the church, but it may also indicate that penance was required by royal law. Finally, Wulfstan recalls that earlier laws were set “folce to steore” (to guide the people). While variants of this phrase are used to describe good leadership in other contemporary texts, in which *steore* would be rendered “steer” or “guide,” Wulfstan often uses *steore* to denote judicial or otherworldly punishment.<sup>30</sup> In the legislative context of *VIII Æthelred*, this diction offers the hint of a threat behind the rhetoric of guidance. The note of compulsion in the final phrase—people will be corrected “for neode”: “by necessity” or, possibly, “for their own good” or even “by force”—further this impression.<sup>31</sup>

Although Wulfstan is clear in *VIII Æthelred* 36 that compensation should ideally encompass both material and spiritual remedies, the inclusion of this sentiment in a royal law code—especially with an intimation of duress—indicates that penalties were to be exacted by secular means. Earthly law (*woroldlaga*) might be aligned with divine law (*godcundan rihtlagan*), but it nevertheless remained an instrument of mundane authorities. By this logic, Wulfstan’s ideal government would empower the king and his agents to take action against all categories of wrongdoing. The problem was that this ideal was not being met. Whereas past kings had sought to align their laws with God’s will, Wulfstan asserts that this approach had been abandoned in recent years, “æfter Eadgares lifdagum” (after Edgar’s lifetime).<sup>32</sup> As he explains in *VIII Æthelred* 38, “And þa man getwæmde þæt ær wæs gemæne Criste ⁊ cynninge on worldlice steore; ⁊ a hit wearð þe wirse for Gode ⁊ for worlde; cume nu to bote, gif hit God wille” (And then was divided that which before was common to Christ and the king in earthly punishment. And ever it became worse before God

<sup>28</sup> The various meanings of *riht* in Old English law are discussed by Daniela Fruscione, “*Riht* in Earlier Anglo-Saxon Legislation: A Semasiological Approach,” *Historical Research* 86 (2013): 498–504. See also T. Northcote Toller, ed., *An Anglo-Saxon Dictionary Based on the Manuscript Collections of the Late Joseph Bosworth* (hereafter cited as Bosworth-Toller) (Oxford, 1898), available online at <http://bosworth.ff.cuni.cz/> (last accessed 31 October 2017), s.v. “*riht*.”

<sup>29</sup> Angus Cameron, Ashley Crandell Amos, Antonette diPaolo Healey, et al., eds., *Dictionary of Old English: A to H Online* (hereafter cited as *DOE*) (Toronto, 2016), <http://doe.utoronto.ca> (last accessed 31 October 2017), s.v. “*bōt*,” sections b–c; and see further below.

<sup>30</sup> For example, Ælfric of Eynsham applies the phrase to Moses bringing the Ten Commandments “to steore” mankind—a formulation he uses in his pastoral letters to Wulfstan (“*mancynne to steore*,” “*eallum mannum to steore*”): Ælfric of Eynsham, *Letters* II.10 and III.120, ed. Fehr, *Hirtenbriefe Ælfrics*, 74–75, 188–91; and see further below, n. 44. Wulfstan, by contrast, uses *to steore* in reference to earthly penalties incurred by religious violations in *VI Æthelred* 51 and Bethurum, *Homilies of Wulfstan*, 276, no. 21; compare also the later eleventh-century *Northumbrian Priests’ Law* 54.1. Wulfstan also uses *steor* in reference to divine punishment, corporal punishment for canons, and punishment imposed by earthly (*worldlice*) authorities: see Bethurum, *Homilies of Wulfstan*, 254 and 193, nos. 19 and 10a; *VIII Æthelred* 38; Arthur Napier, *Wulfstan* (Berlin, 1883), 266 and 311, nos. I and Ixi; Karl Jost, *Die “Institutes of Polity, Civil and Ecclesiastical”* (Bern, 1959), 44–45. See also Bosworth-Toller, s.v. “*steóran*,” sections i.a, iv; “*steór*,” sections i, iii, and v.

<sup>31</sup> Bosworth-Toller, s.v. “*níd*.”

<sup>32</sup> *VIII Æthelred* 37.

and before the world. Let it now come to correction, if God will it).<sup>33</sup> More clearly this time, royal and religious penalties of the past are linked together as “earthly punishment” (*worldlicre steore*), both to be administered in the secular realm. What, then, did Wulfstan mean by his complaint that a unified (*gemæne*) mode of earthly justice had been divided?

I propose that an answer can be found in the shifting focus and tone of Anglo-Saxon legislation in the second half of the tenth century. Wulfstan noted his admiration for several lawmaking kings in his corpus, but the laws of Æthelred’s father, Edgar, best embodied the ideals the archbishop sought to emulate in style, content, and structure. From their opening clauses, Edgar’s codes articulate more explicitly than any of his predecessors’ the connection between good law and divine favor: royal legislation must be obeyed “Gode to lofe 7 ure ealra saula to þearfe 7 eallum folce to friðe” (for love of God, and for the necessity of all our souls, and for peace among all the people).<sup>34</sup> The kingdom’s prosperity thus requires the enforcement of correct religious practice. Edgar’s laws regulate ecclesiastical dues, tithing schedules, observance of feasts and fasts, and protection of churches (*ciricgrið*), as well as mandating that the population obey the nation’s bishops and that laymen ensure that all religious obligations are met.<sup>35</sup> The importance of these rules is further emphasized by the structure of Edgar’s extant law codes, which give ecclesiastical clauses their own designated sections.<sup>36</sup> By treating religious guidelines as a subset of secular law, worthy of inclusion in a royal code yet distinct from mundane concerns, Edgar simultaneously assumed responsibility for the well-being of the earthly church and recognized ecclesiastical rules as a self-contained category, distinct from criminal regulation.

Edgar’s legislation is also concerned with local procedure, notably in the mandate that lay and ecclesiastical authorities collaborate at shire courts: “þær beo on ðære scire biscop 7 se ealdorman, 7 þær ægðer tæcan ge Godes riht ge worul driht” (the bishop and the *ealdorman* of the shire shall be there, and they shall direct both God’s justice and earthly justice there).<sup>37</sup> Wulfstan would later require the same approach,

<sup>33</sup> Compare the similar formulation quoted above, 1 and n. 2.

<sup>34</sup> *IV Edgar* 15, and compare also *II Edgar* prol. This command is framed as a response to a divine punishment of plague, which “mid synnum 7 mid oferhyrnyse Godes beboda gearnod wære” (was earned with sin and with contempt for God’s command): *IV Edgar* 1.

<sup>35</sup> For ecclesiastical dues, see *II Edgar* 1.1, 2–2.3, 5.2; *IV Edgar* 1–1.8. For tithing schedules and timely payment, *II Edgar* 2.3–4; *IV Edgar* 1.4–1.5. For feasts and fasts, *II Edgar* 5–5.1. For protection of churches (*ciricgrið*), *II Edgar* 5.3. For obedience to bishops, *IV Edgar* 1.8. For lay enforcement of religious rules, *IV Edgar* 1.5, 1.8, 15. Many of these obligations were required by Anglo-Saxon royal law before Edgar’s: see, for example, *Ine* 3, 4, 5–5.1, 61; *Alfred* 2.1, 5, 5.5, 6–6.1, 40.1–2; *I Æthelstan*; *Æthelstan Alms*; *II Æthelstan* 5, 24.1; *III Æthelstan* 1.1; *I Edmund* 2, 5; *II Edmund* 2.

<sup>36</sup> Edgar’s two-part Andover legislation, *II–III Edgar*, treated ecclesiastical and secular regulations in separate sections, and there is a comparable division in *IV Edgar*, with clauses 1–1.8 focused on religious matters and clauses 2–14 focused on earthly matters. However, both texts reveal overlap between spiritual and secular concerns: see Wormald, *Making of English Law*, 313–20. Æthelstan and Edmund also promulgated self-contained sets of religious mandates in addition to law codes concerned predominantly with secular affairs: see *I Æthelstan*, *Æthelstan Alms*, and *I Edmund*; Cubitt, “Bishops and Councils,” 156–57.

<sup>37</sup> *III Edgar* 5.2. This collaborative approach mirrors Carolingian practice, which called for cooperation between lay and ecclesiastical authorities in administering justice and enforcing the law: an overview is provided by Hamilton, “Episcopal Justice,” 26–29. For Wulfstan’s reliance on Carolingian *Speculum* 94/3 (July 2019)

replicating this clause verbatim in his laws for Cnut.<sup>38</sup> During the early decades of Æthelred's reign, by contrast, Wulfstan claimed that the kingdom had moved away from the type of collaborative justice that characterized Edgar's legislation, with the separation of punishments once "common to Christ and the king" proving detrimental to the kingdom's health.<sup>39</sup> Certainly, the tenor of written law changed after Edgar's death, and this shift may help illuminate Wulfstan's critique. From Æthelred's accession in 978 until Wulfstan began drafting royal legislation in 1008, royal law was dominated by secular matters, without corresponding sections of ecclesiastical rules.<sup>40</sup> In the various instructions concerning local and regional courts issued during these three decades, there was no stated requirement that laymen and clergy administer justice together. This seems to reflect a new legislative strategy, which departed from Edgar's: instead of unifying ecclesiastical and secular justice under the king's authority, Æthelred's pre-Wulfstanian laws decoupled religious regulations from royal law.<sup>41</sup> In this context, Wulfstan's concerns about the division of punishments should not be read as an abstract complaint but as a direct response to recent legal developments. The exhortation in *VIII Æthelred* 38 that this situation "cume nu to bote" (come now to correction) indicates that Wulfstan was calling for specific practices to be remedied.

So what motivated these changes? Edgar's integrated approach to law and justice was likely informed by the ideology of the tenth-century monastic reforms, which fostered close collaboration between the king and high-ranking ecclesiastics.<sup>42</sup> After Edgar's death, England's political landscape became more complicated. A protracted succession debate between Edgar's young sons, conflicts among the nobility, and the resumption of Viking attacks in England moved the nation away from the unifying ideals of the previous regime. Where contemporary accounts of Edgar's reign (composed predominantly by reforming ecclesiastics) praised the king's engagement with religious institutions, the next generation of authors proved more wary of lay involvement in church affairs.<sup>43</sup> Their anxiety about the corrupting influence of the secular world extended to the administration of justice. Most prominently, Ælfric of

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sources and models, see, for example, Patrick Wormald, "Archbishop Wulfstan: Eleventh-Century State Builder," in Townend, *Wulfstan, Archbishop of York*, 9–27; Joyce Hill, "Archbishop Wulfstan: Reformer?," in Townend, *Wulfstan, Archbishop of York*, 309–24; Christopher A. Jones, "Wulfstan's Liturgical Interests," in Townend, *Wulfstan, Archbishop of York*, 325–52.

<sup>38</sup> *II Cnut* 18.1. For councils comprised of lay and ecclesiastical authorities, see Cubitt, "Bishops and Councils," 154–59; Elliot, "Canon Law Collections," 45–49; Cowdrey, *Lanfranc*, 123. Compare also Anglo-Saxon synods classified as *concilia mixta*, in which ecclesiastical matters were considered under royal oversight: see Catherine Cubitt, *Anglo-Saxon Church Councils c. 650–c. 850* (London, 1995), 6–8, 44–59; Helmholz, *Oxford History of the Laws of England*, 1:14–19.

<sup>39</sup> *VIII Æthelred* 38; see above, n. 33.

<sup>40</sup> As Wormald, *Making of English Law*, 328, notes, Æthelred's early laws were "as resolutely secular as Wulfstan's were overwhelmingly ecclesiastical."

<sup>41</sup> Given the length and thoroughness of these texts, this secular focus seems to be an intentional strategy and not the result of careless omission. In Wormald's words, "English legislation had seldom before been so thoroughly planned": Wormald, *Making of English Law*, 325.

<sup>42</sup> I argue this point at greater length in "King Edgar and the Laws of Archbishop Wulfstan," in *Remembering the Present: Generative Uses of the Anglo-Saxon Past*, ed. Jay Paul Gates and Brian O'Camb (Leiden, forthcoming).

<sup>43</sup> Marafioti, "Edgar and the Laws of Wulfstan." For the increasing influence of high-ranking laity in ecclesiastical affairs, see Cubitt, "Individual and Collective Sinning," 51–56.

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Eynsham cautioned strongly against the clergy's participation in secular courts, and it is significant that his fullest discussions of this matter appear in the pastoral letters he wrote for Wulfstan.<sup>44</sup> One of Ælfric's concerns was that criminal trials—like any other earthly activity—distracted clergymen from completing their spiritual work as pastors.<sup>45</sup> The greater problem, though, was that “illa manus quę humanum sanguinem effuderit non potest digne domini calicem sanctificare” (the hand that spills human blood cannot worthily sanctify the chalice of the Lord).<sup>46</sup> Because bloodshed was a fundamental element of earthly justice, clergy were prohibited from rendering secular judgments: “We ne moton beon ymbe mannes deað. Peah he manslaga beo oþþe morðfremmende oþþe mycel þeofman, swa þeah we ne scylan him deað getæcean. Na we ne motan deman ymbe þæt” (We may not be involved in the death of a man. Even if he is a killer or a murderer or a great thief, nevertheless, we must not prescribe death for him. We may never make a judgment concerning that).<sup>47</sup> Instead, “seculares iudices debent iudicare de furibus et latronibus, quia canones prohibent episcopos uel clericos de his iudicare” (secular judges ought to judge concerning thieves and robbers, because the canons prohibit bishops or clerics to judge concerning them).<sup>48</sup> Ælfric did not object to the application of physical punishments per se, but he feared that clerical participation would degrade the purity of the church.<sup>49</sup>

Ælfric's concerns were not unfounded, for there is ample evidence around the turn of the millennium that high-ranking clergy rendered judgment in secular

<sup>44</sup> Ælfric composed these texts after Wulfstan's elevation to York in 1002. The Old English and Latin letters are edited by Fehr, *Hirtenbriefe Ælfrics*; and see also the digital edition by Michael D. Elliot, *Anglo-Saxon Canon Law* (2015), <http://individual.utoronto.ca/michaielelliott/index.html> (last accessed 31 October 2017). For dating and context, see especially Peter Clemons, “Supplement to the Introduction,” in Fehr, *Hirtenbriefe Ælfrics*, cxxvii–cxlviii; Peter Clemons, “The Old English Benedictine Office, Corpus Christi College, Cambridge, MS 190, and the Relations Between Ælfric and Wulfstan: A Reconsideration,” *Anglia* 78 (1960): 265–83; Joyce Hill, “Ælfric, His Life and Works,” in *A Companion to Ælfric*, ed. Mary Swan and Hugh Magennis (Leiden, 2009), 35–65, at 58–63; Hill, “Archbishop Wulfstan: Reformer?,” 113–17; Joyce Hill, “Monastic Reform and the Secular Church,” 103–17; Malcolm Godden, “The Relations of Wulfstan and Ælfric: A Reassessment,” in Townend, *Wulfstan, Archbishop of York*, 353–74; Cross and Hamer, *Wulfstan's Canon Law*, 17–22.

<sup>45</sup> “Sed ualde dolendum est, quia his diebus tanta neglegentia est in episcopis qui deberent esse cumpulne aeclesiae, ut non adtendant diuinam scripturam nec docent discipulos qui sibi succedant in episcopatum . . . sed honores seculares et cupiditates uel auaritiam sectantes plus quam laici mala exempla subditis prebentes” (For it is truly to be regretted, that in these days there is such negligence among the bishops, who ought to be pillars of the Church, that they do not pay attention to divine scripture nor teach students who will succeed them in the episcopacy . . . but are following secular honors and desires or avarice more than the laity do, presenting a bad example to their underlings): Ælfric of Eynsham, *Letter* 2a.15, ed. Fehr, *Hirtenbriefe Ælfrics*, 226–27. This passage appears toward the end of a discussion on clerical participation in secular justice; see further below.

<sup>46</sup> Ælfric of Eynsham, *Letter* 2a.14, ed. Fehr, 225. This chapter is concerned with clergy committing injuries in warfare or in arguments, and the following chapter is concerned with clerical participation in secular justice; see below, n. 48.

<sup>47</sup> Ælfric of Eynsham, *Letter* II.201, ed. Fehr, *Hirtenbriefe Ælfrics*, 140–41.

<sup>48</sup> Ælfric of Eynsham, *Letter* 2a.15, ed. Fehr, *Hirtenbriefe Ælfrics*, 226.

<sup>49</sup> Nicole Marafioti, “Punishing Bodies and Saving Souls: Capital and Corporal Punishment in Late Anglo-Saxon England,” *Haskins Society Journal* 20 (2008): 39–57; and compare William E. Bolton, “‘We Ne Motan Deman Ymbe Þæt’: Clerical Judgment in Ælfric of Eynsham's *Life of Saints Swithun, Edmund, and Æthelwold*,” *Viator* 46 (2015): 21–42.

cases.<sup>50</sup> Latin hagiographies of the later tenth century recalled that Archbishop Dunstan of Canterbury ordered the amputation of forgers' hands and Bishop Ælfheah of Winchester sentenced a thief to flogging; both actions were described as the just enforcement of the law.<sup>51</sup> In the same period, there are records of abbots pronouncing outlawry, which offenders could avoid through material payments.<sup>52</sup> Bishop Oscytel of Dorchester was reportedly ready to pronounce a death sentence for a thieving priest, had the offender's friends not secured a lesser sentence through a generous gift to his church.<sup>53</sup> Other accounts attest that clergy deliberated with secular magnates to issue sentences for material offenses. Archbishop Dunstan, Bishop Æthelwold of Winchester, and two other bishops were named as participants in a royal council that ruled a thief's property forfeit;<sup>54</sup> and in 996, two archbishops, six bishops, and seven abbots participated in a council that pronounced a recalcitrant nobleman's life and property forfeit.<sup>55</sup>

Although proceedings like these may have been in line with the collaborative approach advocated in Edgar's laws, there appears to have been a reaction against this level of clerical participation in secular affairs by the later tenth century. As Ælfric noted in his pastoral letter, "qui uero iudex aut occisor latronum est, non potest inter agnos innocentes computari" (whoever is a judge or killer of thieves cannot be

<sup>50</sup> Barlow, *English Church*, 147–48.

<sup>51</sup> Wulfstan of Winchester, *The Life of St Æthelwold*, ed. Michael Lapidge and Michael Winterbottom (Oxford, 1991), 68–69; Eadmer of Canterbury, *Lives and Miracles of Saints Oda, Dunstan, and Oswald*, ed. Bernard J. Muir and Andrew J. Turner (Oxford, 2006), 119–23. See also Patrick Wormald, "A Handlist of Anglo-Saxon Lawsuits," *Anglo-Saxon England* 17 (1988): 247–81, nos. 158 and 174; Nicole Marafioti and Jay Paul Gates, introduction to *Capital and Corporal Punishment in Anglo-Saxon England*, ed. Gates and Marafioti (Woodbridge, UK, 2014), 1–16, at 6–7.

<sup>52</sup> A list of sureties for property at Peterborough notes that two men transferred an estate to Abbot Eadulf: "hi þat lande guldun æt Macusige for ðan utlage þa he on Wulnoðe worhte" (they paid over the estate at Maxey for the outlawry which he [i.e., Eadulf] pronounced on Wulfnoth): A. J. Robertson, *Anglo-Saxon Charters* (Cambridge, UK, 1956), 78–81, no. 40 (I follow Robertson's translations). A comparable construction, which probably indicates another abbatial sentence of outlawry, notes that one Osgot transferred an estate to Abbot Eadulf, "þe he geald him for þam utlage þe he Styrctyr ofslogh" (which he paid over to him for the outlawry he had incurred through slaying Styrctyr); Robertson, *Charters*, 76–79, no. 40. This text should be dated between 963 and 992: see Robertson, *Charters*, 330; Wormald, "Handlist," 262, nos. 50–51.

<sup>53</sup> The other possible outcome was that the thief would be ejected from his order, but it seems that neither of these sentences was enacted. The episode is recorded in the *Liber Eliensis*, where it is dated to the reign of Edgar: see E. O. Blake, ed., *Lieber Eliensis* (London, 1962), 106; Janet Fairweather, trans., *Liber Eliensis: A History of the Isle of Ely from the Seventh Century to the Twelfth* (Woodbridge, UK, 2005), 129; Wormald, "Handlist," 267, no. 124.

<sup>54</sup> The episode occurred during the reign of Edgar but was recorded between 975 and 987: Robertson, *Charters*, 123, no. 59; see also Wormald, "Handlist," 262, no. 45. This charter is catalogued in P. H. Sawyer, *Anglo-Saxon Charters: An Annotated List and Bibliography* (London, 1968), no. 1457 (henceforth cited as S1457).

<sup>55</sup> "Pa getæhton ealle þæt witan þe þær wæron ge gehadode ge læwīde þam cyng ealle Wulboldes ære 7 hine silfne to þam þe se cyng wolde swa to life swa to deape" (Then all the *witan* who were present—both clergy and lay—assigned to the king all of Wulfbold's property as well as his life, so that the king would decide if he should live or go to his death); Robertson, *Charters*, 129, no. 63; Wormald, "Handlist," 262–63, nos. 57–58; S877. The text goes on to list the individuals who participated in this decision ("þis sind þa men þa wæron æt þa tacinge") and record the subsequent decision against Wulfbold's widow and son.



numbered among the innocent lambs).<sup>56</sup> Attitudes like his must have inspired a greater separation of secular and ecclesiastical justice in order to promote an ideal of clerical purity, and I suggest that views of this sort motivated the drafters of Æthelred's pre-Wulfstanian law codes to focus exclusively on earthly offense and regulation.<sup>57</sup> Moreover, if the secular bent of written legislation was accompanied by changes in judicial administration, it is reasonable to hypothesize that religious offenses were removed from the jurisdiction of shire courts and addressed instead through a separate process of ecclesiastical justice, overseen by clergy and governed by canon law rather than royal decrees—a model consistent with contemporary Continental practice and with post-Conquest approaches to justice.<sup>58</sup> The logistics of such a bifurcated system will be considered further below. For the present discussion, though, Wulfstan's objections to the division of religious and secular penalties in *VIII Æthelred* 36–38 make clearer sense if clergy and laymen had begun administering justice independently, instead of at a common gathering. Such a scenario would also help explain why Wulfstan considered Edgar's legislation to be so valuable: it provided a blueprint for judicial collaboration between laymen and ecclesiastics. The success of Edgar's reign proved that his collaborative model was effective and in line with God's will. Accordingly, Wulfstan built on the content and structure of Edgar's laws in his efforts to restore this lost status quo ante.<sup>59</sup> In 1008, he reintroduced religious rhetoric and regulations into royal legislation with *V–VI Æthelred*; in 1014, he codified his admiration for earlier kings' alignment of secular and divine justice with *VIII Æthelred*; and in the 1020s, he revived judicial collaboration as a legal requirement in *I–II Cnut*.<sup>60</sup>

Wulfstan's ideal was a law that gave religious and secular priorities equal weight, keeping spiritual and earthly order by compelling offenders to submit both to ecclesiastical and temporal justice. Still, it is important to note that this unified approach was not automatic or inevitable. Neither should it be attributed to an inability or disinclination to differentiate religious from secular wrongdoing. Ælfric advocated that clear boundaries between the mundane and religious spheres be maintained, and the secular focus of Æthelred's pre-Wulfstanian legislation indicates that this approach was considered valid by high-ranking royal advisors. Based on the passages quoted above, it is clear that Wulfstan also recognized secular and ecclesiastical justice as distinct, separable processes. However, he appears to have been en-

<sup>56</sup> Ælfric of Eynsham, *Letter* 2a.15, ed. Fehr, *Hirtenbriefe Ælfrics*, 226.

<sup>57</sup> Simon Keynes has identified a shift in Æthelred's advisors in the early 990s: a greater ecclesiastical presence in witness lists coincided with a rise in grants of lands and privileges to religious institutions. During this period, a number of royal grants framed the restoration of lands and privileges in penitential terms, with Æthelred expressing contrition for earlier abuses against the church at the advice of bad advisors; it is conceivable that religious institutions were given a new degree of autonomy from secular authorities. For Æthelred's advisors and grants during this period, see especially Simon Keynes, *The Diplomas of King Æthelred "the Unready," 978–1016* (Cambridge, UK, 1980), 176–202; compare also Wormald, *Making of English Law*, 323, for the influence of the royal advisors on Æthelred's pre-Wulfstanian law. For the penitential considerations behind these royal grants, see Cubitt, "Politics of Remorse"; Roach, "Public Rites," 193–99.

<sup>58</sup> Above, n. 23.

<sup>59</sup> Wormald, *Making of English Law*, 355–64; see also Marafioti, "Edgar and the Laws of Wulfstan."

<sup>60</sup> *V* and *VI Æthelred*; *VIII Æthelred* 36–38; *II Cnut* 18.1.



gaging in a broader debate over the appropriate relationship between earthly and religious law. In support of his own position, Wulfstan promulgated the historical narrative that underpinned his laws: secular and ecclesiastical justice had been united under Edgar (and other good kings of the past) and divided after Edgar's death, to the detriment of the kingdom. The surest way to restore God's favor, by this logic, was to revive the methods of government that had brought prosperity to previous generations. The question, then, was how to unite ecclesiastical and secular processes while maintaining the integrity of each—preserving the purity of the clergy, for instance, while ensuring that earthly punishment remained effective.<sup>61</sup> What was the appropriate relationship between ecclesiastical and secular justice?

JUDICIAL JURISDICTIONS IN *DE MEDICAMENTO ANIMARUM*  
AND OLD ENGLISH LAW

Wulfstan provides a detailed discussion of the relation between secular and ecclesiastical authority in a short Latin tract, *De medicamento animarum*, which is preserved in one of his “commonplace book” manuscripts.<sup>62</sup> The piece opens with an overview of bishops' duties, including their obligation to impose penance; it then prohibits laymen from participating in ecclesiastical judgments and clergy from participating in secular judgments; and it concludes with an exhortation to all the faithful to submit to Christian teaching. Throughout the text, discussions of penance, teaching, and episcopal responsibility are framed in judicial terms, with markedly legalistic vocabulary. In particular, Wulfstan is concerned with ecclesiastical judgments (*iudicia eclesiastica*), differentiating these firmly from secular judgments (*secularibus iudiciis*) and explaining that episcopal judges held powers distinct from those of their secular counterparts.<sup>63</sup>

At first glance, Wulfstan's position here seems antithetical to the collaborative approach he advocates in *VIII Æthelred*, for *De medicamento animarum* states clearly that “episcoporum enim est omnia iudicia eclesiastica rite disponere” (it is right that bishops set all ecclesiastical judgments).<sup>64</sup> The text continues:

<sup>61</sup> See, for example, *II Cnut 2* (= *III Edgar 1.2*); quoted below, 30 and n. 134.

<sup>62</sup> *De medicamento animarum* is preserved in the Wulfstanian manuscript London, British Library, Cotton MS Nero A.i, with additions and corrections in the archbishop's hand; the tract appears at fols. 164–65, with Wulfstan's writing on fols. 164r–v. The text is edited by Elliot, “Canon Law Collections,” 1042–43; and Fehr, *Hirtenbriefe Ælfrics*, 251–53; a facsimile is provided by Henry R. Loyn, *A Wulfstan Manuscript Containing Institutes, Laws and Homilies: British Museum Cotton Nero A.I* (Copenhagen, 1971), fols. 164–65, with commentary on the penitential theme of the manuscript's Latin texts at 52–53. A digital version of the manuscript is also available in the British Library's Digitised Manuscripts collection, at [http://www.bl.uk/manuscripts/FullDisplay.aspx?ref=Cotton\\_MS\\_Nero\\_A\\_I](http://www.bl.uk/manuscripts/FullDisplay.aspx?ref=Cotton_MS_Nero_A_I) (last accessed 31 October 2017). Wulfstan's notations are identified by Neil Ker, “The Handwriting of Archbishop Wulfstan,” in *England before the Conquest: Studies in Primary Sources Presented to Dorothy Whitelock*, ed. Peter Clemoes and Kathleen Hughes (Cambridge, UK, 1971), 315–31, at 324. Verbal similarities with other Wulfstanian texts are noted by Cross and Hamer, *Wulfstan's Canon Law*, 25–26; Elliot, “Wulfstan's Commonplace Book,” 41–46.

<sup>63</sup> Quotations are from Elliot, “Canon Law Collections,” 1042; Fehr, *Hirtenbriefe Ælfrics*, 251–52; and see below, nn. 64–65.

<sup>64</sup> The full sentence reads, “Episcoporum enim est omnia iudicia eclesiastica rite disponere: et ut non solum uerbis sed etiam exemplis omnes homines instruant: quia status christianę religionis et ecclę-

Episcopi quoque nullatenus secularibus iudiciis . aut negotiis: curis . uel causis . se inopportune occupent sed ecclesiasticis; Lectioni itaque et orationi et uerbi dei predicationi instanter uacent; Apostolus enim dicit; Nemo militans deo: implicet se negotiis secularibus; Sicut enim distantia est ordinum: sic et distantia esse debet inter sacerdotale et seculare iudicium: et nullus sibi usurpare presumat: quod suo ordini non conuenit.<sup>65</sup>

[Also, let bishops by no means importunately occupy themselves with administration or pleas in secular judgments or lawsuits—only with ecclesiastical ones. Thus they may be free for readings and orations and zealously preaching the word of God. For the Apostle said: let no soldier of God involve himself in secular business.<sup>66</sup> For just as there is distance between the orders, so also there ought to be distance between priestly and secular judgments, and let no one presume to usurp for himself what is not suitable for his order.]

The delineation of episcopal duties is a familiar element of Wulfstan's writings, as are calls for the clergy to devote themselves zealously to their religious obligations.<sup>67</sup> This excerpt also echoes Ælfric's concerns that involvement in secular justice would distract and corrupt the clergy.<sup>68</sup> Unlike Ælfric, however, Wulfstan does not ground his discussion in moral admonitions or prohibitions against bloodshed.<sup>69</sup> In fact, this passage focuses less on the spiritual implications of secular involvement than on the distinction (*distantia*) between different types of judgments (*iudicis*) and pleas or cases (*causis*), as well as the different groups responsible for overseeing them.<sup>70</sup> Here, Wulfstan draws a clear line: bishops are required to issue ecclesiastical judgments and forbidden to issue earthly ones.

*De medicamento animarum* also places jurisdictional limits on secular authorities, firmly restricting the king and other laymen from intervening in ecclesiastical justice.<sup>71</sup> First, Wulfstan asserts that "laicorum autem non est sed sacerdotum dei: de ecclēsiasticis disputare iudiciis" (it is not for the laity but for the priests of God to deliberate ecclesiastical judgments).<sup>72</sup> He then lists a series of biblical and patristic examples to support this point, concluding with the following comments:

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siasticę dignitatē ad eorum curam maxime pertinet" (It is right that bishops set all ecclesiastical judgments; and that they instruct all men, not only with words but also by example, because the standing of the Christian religion and of ecclesiastical dignity is held mostly in their care): Elliot, "Canon Law Collections," 1042; Fehr, *Hirtenbriefe Ælfrics*, 251.

<sup>65</sup> Elliot, "Canon Law Collections," 1042–43; Fehr, *Hirtenbriefe Ælfrics*, 252.

<sup>66</sup> The biblical admonition that clergy not participate in secular affairs (2 Tim. 2.4) is cited in Ælfric's Latin letter for Wulfstan, in the context of secular judgments: Ælfric of Eynsham, *Letter* 2a.15, ed. Fehr, *Hirtenbriefe Ælfrics*, 226. For the relation between Ælfric's letters and the materials in Cotton Nero A.i, see Cross and Hamer, *Wulfstan's Canon Law*, 17–22.

<sup>67</sup> For this theme in Cotton Nero A.1, see Loyn, *A Wulfstan Manuscript*, 49. See also Renée R. Trilling, "Sovereignty and Social Order: Archbishop Wulfstan and the *Institutes of Polity*," in *The Bishop Reformed: Studies of Episcopal Power and Culture in the Central Middle Ages*, ed. John S. Ott and Anna Trumbore Jones (Aldershot, 2007), 58–85; Rabin, *Political Writings of Wulfstan*, esp. 37–38 and 61; Gates, "Preaching, Politics, and Episcopal Reform."

<sup>68</sup> Above, nn. 45–48.

<sup>69</sup> Above, nn. 46–49.

<sup>70</sup> Given the legalistic language of this passage, Wulfstan seems to apply the biblical prohibition against *negotiis secularibus*—usually rendered "secular affairs"—specifically to lawsuits.

<sup>71</sup> Compare concerns among Continental bishops about secular encroachment into ecclesiastical justice: see Hamilton, "Episcopal Justice," 31–33.

<sup>72</sup> Elliot, "Canon Law Collections," 1042; Fehr, *Hirtenbriefe Ælfrics*, 251. On ecclesiastical judgments and jurisdiction, see also Cubitt, *Anglo-Saxon Church Councils*, 67–74.

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His exemplis declaratur . ualde perniciosum esse regi uel principi: uel alicui ex laico ordine disputare aut tractare de ecclesiasticis iudiciis siue canonicis causis. . . . Alexander quoque ad demetrium regem ait; Numquam auditum uel ab aliquo factum sit: ut presentibus episcopis laici disputent de canonicis uel aliis ecclesiasticis ca[us]is: sed omnium ecclesiasticarum rerum . episcopi curam habeant . et ea uelut deo contemplante dispensent.<sup>73</sup>

[By these examples, it is shown to be truly pernicious for the king or prince or anyone from the laity to argue or negotiate ecclesiastical judgments or canonical lawsuits. . . . Alexander also said to King Demetrius: may it never be heard of or done by anyone that—with bishops present—the laity should dispute concerning canonical or other ecclesiastical lawsuits; but let bishops have care of all ecclesiastical affairs and let them manage them as if God were observing.]

Wulfstan draws a sharp distinction between religious and secular justice in this tract, restricting the personnel authorized to participate in each—an approach that anticipates, to some extent, the post-Conquest division of criminal and ecclesiastical jurisdictions. In an early eleventh-century context, however, Wulfstan seems to be following Ælfric in correcting the clergy's overenthusiastic participation in secular procedures. By advocating for strict boundaries in judicial administration, Wulfstan is responding to the very problems Æthelred's early laws—which separated secular from ecclesiastical procedure—appear to address.

Still, the system Wulfstan describes in *De medicamento animarum* does not fit a strict binary model of secular and ecclesiastical jurisdictions. He identifies two separate strands of religious justice in this passage, twice distinguishing ecclesiastical (*ecclesiasticis*) from canonical (*canonicis*) lawsuits.<sup>74</sup> There is no explanation of how these types of suits differ, and it is conceivable that the terms were employed synonymously in this text, for rhetorical emphasis.<sup>75</sup> Alternatively, it is possible that these terms reflect precise legal categories—and that Wulfstan understood transgression somewhat differently than his later medieval counterparts, who construed ecclesiastical and criminal justice as opposing, mutually exclusive categories. Certainly, Wulfstan advocated for separate judicial responses to religious and secular offenses. Yet he also recognized an opposition between material wrongdoing, which caused harm to earthly institutions and required material compensation to make those institutions whole, and spiritual wrongdoing, which offended God and required penitential compensation to redeem offenders' souls.

This distinction is articulated in the opening passage of *De medicamento animarum*, as part of a discussion of the clergy's major responsibilities. The tract begins with the following assertion: "Episcopi igitur et presbiteri pre omnibus sint semper solliciti de cura ecclesiarum . et de medicamento animarum" (Bishops, therefore, and priests should always, above everything, be concerned with the care of churches and with the medicine of souls).<sup>76</sup> The clergy's twofold charge—to care for individual

<sup>73</sup> Elliot, "Canon Law Collections," 1042; Fehr, *Hirtenbriefe Ælfrics*, 251–52.

<sup>74</sup> Above, n. 73.

<sup>75</sup> For this type of parallelism in Wulfstan's corpus, see Don W. Chapman, "Germanic Tradition and Latin Learning in Wulfstan's Echoic Compounds," *Journal of English and Germanic Philology* 101 (2002): 1–18, esp. 11–12.

<sup>76</sup> Elliot, "Canon Law Collections," 1042; Fehr, *Hirtenbriefe Ælfrics*, 251. The clause on the care of churches ("de cura ecclesiarum . et") was added in the margin in Wulfstan's hand: see Ker, "Handwriting of Archbishop Wulfstan," 324.

churches and to care for Christian souls—requires them to take responsibility both for earthly institutions and spiritual affairs. This dual obligation is reiterated a few lines later: “Status christianę religionis et ecclēsiasticę dignitatis ad eorum curam maxime pertinet” (The state of the Christian religion and the state of the church’s dignity rely entirely upon their [i.e., the clergy’s] care).<sup>77</sup> Wulfstan distinguishes here between cultivating faith and cultivating the church, again differentiating spiritual from material concerns within the religious sphere. I propose that this spiritual-material conceptualization explains Wulfstan’s repeated reference to ecclesiastical (*eclesiasticis*) and canonical (*canonicis*) suits. According to this schema, ecclesiastical suits would be those which dealt with violations against the rights and property of the earthly church (*ecclēsiasticę dignitatis*), to be compensated with material penalties—such as fines paid to the bishop—in accordance with earthly law. Canonical suits, by contrast, would be those which concerned sinful violations against God, to be remedied with penance prescribed in accordance with canon law.<sup>78</sup>

Wulfstan’s royal legislation supports this interpretation and indicates that his approach to lawmaking was informed predominantly by a spiritual-material opposition, rather than an ecclesiastical-criminal one. For example, *VIII Æthelred* 2–3 sets the following compensation for anyone who commits homicide in a church:

And þæt is þonne ærest, þæt he his agenne wer Christe 7 þam cyninge gesylle 7 mid þam hine sylfne inlagie to bote. . . . Þonne bete man þæt cyricgrið into ðære cyrcan be cynges fullan mundbrice 7 þa mynsterclænsunge begyte, swa ðerto gebirige, 7 ægþer ge mægþote ge manbote fullice gebete 7 wið God huru þingie georne.<sup>79</sup>

[First, that he pay his own *wergild* to the king and to Christ, and thereby place himself within the law, so that he might offer compensation. . . . Then, for violating the church peace, let him pay that church the full fine for breaking the king’s peace; and let him take responsibility for the church cleaning, as is appropriate; and let the offender fully compensate the family and lord of the dead man; and let him above all eagerly settle with God.]

In this case, the killer is required to pay monetary fines “to the king and to Christ,” render material compensation to the violated church and his victim’s survivors, and settle (*þingie*) with God directly. The payments to the king and survivors serve to compensate the violation of royal protection and the injury done to the dead man, both attested responses to homicide in Anglo-Saxon legislation. The remaining penalties are concerned with the fact that the killing took place in a church. The *wergild* payment to Christ and the fine rendered to the violated church should be under-

<sup>77</sup> Elliot, “Canon Law Collections,” 1042; Fehr, *Hirtenbriefe Ælfrics*, 251.

<sup>78</sup> This distinction anticipates the language of William’s writ, which distinguishes “canones et episcopales leges” (canon and episcopal laws); see above, n. 4, and also below, n. 87, for Wulfstan’s use of the term *canon*. These categories are not always differentiated: in describing various types of penance at the beginning of *De medicamento animarum*, for example, Wulfstan implies that these are all issued by a bishop’s “iudicia ecclēsiastica” (ecclesiastical judgments). Compare a rather different distinction between canon and ecclesiastical law in later periods: “canon law denotes in particular the law of the ‘Corpus Juris,’ including the regulations borrowed from Roman law; whereas ecclesiastical law refers to all laws made by the ecclesiastical authorities as such, including those made after the compiling of the ‘Corpus Juris’”: Auguste Boudinhon, “Canon Law,” *The Catholic Encyclopedia*, vol. 9 (New York, 1910), <http://www.newadvent.org/cathen/09056a.htm> (last accessed 31 October 2017).

<sup>79</sup> *VIII Æthelred* 2–3 (= *I Cnut* 2.3–5).

stood as material restoration for injury to the earthly institution: the former would redeem the violation of Christ's protection, and the latter would redeem the violation of consecrated space.<sup>80</sup> Accordingly, both payments are governed by earthly law, which establishes the correct amounts required for each element of material harm—just as payments are calculated for the king and for the victim's survivors. By contrast, settlement with God would be achieved through an act of penance, which would redeem the sin incurred by the killer's actions.<sup>81</sup> Nevertheless, although penance is mandated by royal law, no precise action is specified here. Unlike material offenses to earthly entities, which were regulated and punished in the secular sphere, penance was rendered to God through the mediation of an ordained confessor; its particulars were therefore outside the purview of royal regulation.

VIII *Æthelred* 2–3 offer some of the most detailed instructions in Wulfstan's legislation and thus allow different categories of offense to be clearly distinguished. These clauses are exceptional, though, for Wulfstan's laws rarely address different genres of punishment so precisely. Even though he distinguishes ecclesiastical (*ecclesiasticis*) from canonical (*canonicis*) suits in *De medicamento animorum*, these categories are obscured in his vernacular legislation: there is no corresponding Old English vocabulary for different forms of religious justice.<sup>82</sup> However, Wulfstan makes a broader distinction between categories of offense in his repeated injunction that wrongdoing be remedied in both spheres, using the phrase *for Gode 7 for worolde*.<sup>83</sup> In standard translations of the Old English, this phrase is rendered "in matters both religious and secular," suggesting an opposition between criminal and ecclesiastical jurisdictions.<sup>84</sup> However, in the context of the present discussion,

<sup>80</sup> The *wergild* payment to Christ might be rendered to the violated church, but it is also likely that this fine would be collected by the bishop, acting in Christ's stead. The appropriate use of such payments is outlined in VI *Æthelred* 51, discussed below, n. 128.

<sup>81</sup> Bosworth-Toller, s.v. "þingian," section 2, glosses *þingian* as "to make terms, settle." Wulfstan repeatedly uses the term in penitential contexts, in which individuals are urged to settle or make amends with God for their sins. Sometimes the act of settling with God (*wið God þingian*) is part of a larger process of turning from sin: Bethurum, *Homilies of Wulfstan*, 275, no. 20 [ei]; Napier, *Wulfstan*, 130 and 204, nos. xxvii and xlii. Elsewhere, the clergy is instructed to intervene (*þingian*) with God to settle a penitent's sins at the end of Lent or during a penitential fast: Bethurum, *Homilies of Wulfstan*, 235, no. 14; Napier, *Wulfstan*, 171, no. xxxv. In other texts, individuals are exhorted to settle with God directly as part of good Christian practice or as a condition of absolution: *Cnut* 1020 19; Roger Fowler, "A Late Old English Handbook for the Use of a Confessor," *Anglia* 83 (1965): 1–34, at 32. Wulfstan's connection with this text is established by Fowler, "Handbook," 6–12; Catherine Cubitt, "Bishops, Priests and Penance in Late Anglo-Saxon England," *Early Medieval Europe* 14 (2006): 41–63, at 53–54; Melanie Heyworth, "The 'Late Old English Handbook for the Use of a Confessor': Authorship and Connections," *Notes and Queries* 252 (2007): 218–22. Arranging for the defiled church to be cleaned could also have been a penitential act: compare Fowler, "Handbook," 29.

<sup>82</sup> Compare the discussion of legal terminology in Hyams, "Crime and Tort," 109–10, 115.

<sup>83</sup> Versions of the phrase appear, for example, in V *Æthelred* 1.1, 4, 9.2, 33.1; VI *Æthelred* 2, 5.4, 8, 36, 39, 40.1, 53; VIII *Æthelred* 38; II *Cnut* 2, 11.1, 38.1; *Edward and Guthrum* 4. See also Sara M. Pons-Sanz, "For Gode and for Worolde: Wulfstan's Differentiation of the Divine and Worldly Realms through Word-Formation Processes," *English Studies* 85 (2004): 281–96.

<sup>84</sup> For example, A. J. Robinson translates "in matters both religious and secular" (V *Æthelred* 1.1, 4, 33.1), "towards church and state" (VI *Æthelred* 36, 39), and "to God and to men" (II *Cnut* 38.1): see Robinson, *The Laws of the Kings of England from Edmund to Henry I*, 2 vols. (Cambridge, UK, 1925), 1:79, 81, 89, 103, 195. Dorothy Whitelock translates "in both religious and secular concerns" (V *Æthelred* 1, with similar phrasing at 4, 33.1), "in Church and state" (VIII *Æthelred* 38), "to God



a more accurate rendering would be “to God and to earthly authorities,” reflecting a spiritual-material division. This reading is borne out in descriptions of how different compensation for *Gode* ⁊ *for worolde* ought to be determined. For instance, VI *Æthelred* 50 decrees: “Se þe ahwar heonan forð rihte laga wyrde, Godes oþþon manna, gebete hit georne, swa hwæþer swa hit gebyrige, swa mid godcundre bote swa mid woroldcundre steore” (Henceforth, whoever violates the rightful law of God or men anywhere: let him eagerly make amends in whatever way is fitting, whether with penance or with earthly punishment).<sup>85</sup> In this formulation, violation of God’s law requires spiritual compensation (*godcundre bote*), while violation of human law requires earthly punishment (*woroldcundre steore*). This clause does not distinguish civil from ecclesiastical penalties; instead, it differentiates penance rendered to God from material punishment rendered to earthly powers. This point is addressed in greater detail in II *Cnut* 38.2, which explains exactly how compensation should be determined in each sphere: “godcunde bote sece mann symle georne be boctæcinge, ⁊ woruldcunde bote sece man be woruldlage” (let spiritual compensation [i.e., penance] always be undertaken eagerly, according to book teachings, and let earthly compensation be undertaken according to earthly law).<sup>86</sup> This clause again divides penance (*godcunde bote*) and earthly compensation (*woruldcunde bote*) into opposing categories, but it goes a step further than VI *Æthelred* 50 by codifying the guiding principles behind each. Where earthly compensation is to be determined by earthly law (*woruldlage*), penance is governed by “book teachings” (*boctæcinge*), or canon law.<sup>87</sup> Wulfstan is clear that separate processes must be used to determine and implement these two types of penalties, but in articulating this logic, he grants sins a distinctive status: they merit prohibition under secular law, but they can only be remedied through ecclesiastical procedure.

Material violations against the church, by contrast, were given precise punishments in Wulfstan’s royal laws: such offenses required earthly compensation (*woruldcunde bote*) governed by earthly law (*woruldlage*) in order to maintain the health of an earthly institution. This was the case in VIII *Æthelred* 2–3, which required an individual who committed homicide in a church to render payment for violating Christ’s protection and bear the cost of cleaning the defiled building.<sup>88</sup> Wulfstan assigned monetary payments to bishops in his royal legislation, as well. If episcopal protection (*borh*) was violated, for instance, bishops were granted compensation

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and to men” (II *Cnut* 38.1); see Whitelock, *English Historical Documents*, vol. 1, c. 500–1042, 2nd ed. (London, 1979), 442–46, 451, and 460, nos. 44, 46, and 49.

<sup>85</sup> The phrase *godcunde bot* refers to penance elsewhere in Wulfstan’s corpus, notably V *Æthelred* 29; *Edward and Guthrum* prol. 2; *Hadbot* 2–8; Napier, *Wulfstan*, 275, no. li. Compare also II *Edmund* 4.

<sup>86</sup> II *Cnut* 38.2.

<sup>87</sup> The DOE glosses *boctalu* as “instruction or teaching contained in books (of penance or ecclesiastical law)”; the term appears uniquely in II *Cnut* 38.2. Elsewhere in his corpus, Wulfstan emphasizes that every bishop should have a book of canons (*canonboc*) and that penances should be assigned according to canonical decrees (*æfter canon dome*): see Jost, *Institutes of Polity*, 211, 172; Fowler, “Handbook,” 27–28. Compare Ælfric’s Old English letter to Wulfstan: “Canones sind gecwedene rihte regulas, þe us gerihtlæcað” (Correct rules, which direct us, are called “canons”); Ælfric of Eynsham, *Letter* II.152, ed. Fehr, 124–25. See also DOE, s.v. “canondom,” glossed as “book of canons, collection of ecclesiastical laws.”

<sup>88</sup> Above, n. 79.



payments comparable to those awarded to high-ranking laymen.<sup>89</sup> Fines for committing perjury under oath, attacking a clergyman, and failing to pay ecclesiastical dues were to be split between the local lord and bishop; moreover, anyone who wounded another while resisting tithe collectors was to render an additional fine to the king and pay the bishop to redeem his hand from amputation.<sup>90</sup> In these cases, bishops were construed as injured parties entitled to recompense under royal law, just like their lay counterparts. Elsewhere in his royal law codes, Wulfstan decrees that specific offenses be subject to episcopal rather than secular judgment.<sup>91</sup> This was the case in instances in which clergy committed offenses normally governed by secular law: a clergyman (*gehadod man*) who committed a capital crime was to be captured and “healde to bisceopes dome” (held for the bishop’s judgment); a priest (*mæssepreost*) who gave false witness, perjured himself, or was an accomplice to thieves was to be removed from his office “buton he wið God 7 wið men þe deoplicor gebete, fullice swa biscop him tæce” (unless he compensate deeply to God and to men, entirely as the bishop instructs him).<sup>92</sup> Similar instructions were given concerning laypeople who failed to refute charges of sexual misconduct or illicit killing (*morð*). If a married man kept a concubine, he was to be excluded from communion until he compensated “swa bisceop him tæce” (as the bishop instructs him); if a married woman could not refute an accusation of adultery, “bisceop þonne wealde 7 stiðlice deme” (the bishop shall have control and judge severely); and if a person failed to clear himself of a *morð* charge, “deme se bisceop” (the bishop shall judge).<sup>93</sup> These final two offenses were normally subject to secular penalties, but the failure to prove innocence—presumably through the oath or ordeal, procedures that invoked God’s judgment and were overseen by clergy—made the offense a spiritual matter, which placed a perpetrator, under royal law, within the bishop’s jurisdiction.<sup>94</sup>

<sup>89</sup> *II Cnut* 58.1–2 set these fines at three pounds for archbishops or *æthelings*, and two pounds for bishops or *ealdormen*.

<sup>90</sup> For perjury, see *II Cnut* 36; for binding or beating the clergy, see *II Cnut* 42; for ecclesiastical dues, see *VIII Æthelred* 7–8 (= *I Cnut* 8.2), *I Cnut* 9–10.1, and *II Cnut* 48.1.

<sup>91</sup> Compare Helmholz, *Oxford History of the Laws of England*, 1:56–57.

<sup>92</sup> *II Cnut* 43 and *VIII Æthelred* 27 (= *I Cnut* 5.3, omit “fullice”).

<sup>93</sup> *II Cnut* 54.1 (the preceding clause 54 on adultery requires compensation “wið God 7 wið men,” and this may be implicit in 54.1 as well); *II Cnut* 53.1; *II Cnut* 56.1. The precise meaning of *morð* is debated: see especially Bruce R. O’Brien, “From *Morðor* to *Murdrum*: The Preconquest Origin and Norman Revival of the Murder Fine,” *Speculum* 71/2 (1996): 321–57, at 342–49; Stefan Jurasinski, “‘Reddatur parentibus’: The Vengeance of the Family in Cnut’s Homicide Legislation,” *Law and History Review* 20 (2002): 157–80, at 161–62, 170–80; Wormald, *Making of English Law*, 363, 367; Tomas Lambert, “Protection, Feud, and Royal Power: Violence and Its Regulation in English Law, c. 850–c. 1250” (PhD diss., Durham University, 2009), available online at <http://etheses.dur.ac.uk/2/> (last accessed 31 October 2017), 59–60. Compare similar procedures in *Edward and Guthrum* 4 on incest and 4.2 on clerical misconduct.

<sup>94</sup> The secular consequences for each offense are listed in the preceding clauses: *II Cnut* 53 decrees that a woman whose adultery becomes known (“open weorðe”) will forfeit her property and lose her nose and ears; *II Cnut* 56 requires a man responsible for a killing that is deemed murder (“open morð weorð”) to be surrendered to his victim’s family. Procedures for addressing charges through the oath or ordeal are provided in *I Æthelred* 1–1.14 and *II Cnut* 30–30.9. The ecclesiastical setting of the ordeal and invocations to God in judicial oaths are attested in *Ordal* and *Swerian*: see Liebermann, *Gesetze*, 1:386–87, 396–99; the bishop’s role is explicated in *Episcopus* 5.

In Wulfstan's legislation, material compensation or judgment was assigned to the bishop in cases that diminished the church's material well-being (refusal to pay tithes, harm to the clergy) or its integrity as an earthly institution (clerical crime, violation of episcopal protection, violation of marriage vows, testing God's judgment). These categories of offense would come to be regulated by ecclesiastical courts in the later medieval period, but in the early eleventh century, I contend, they were governed by royal law because of their status as material violations against the earthly church.<sup>95</sup> Nevertheless, Wulfstan is clear in *De medicamento animarum* that such "ecclesiastical" cases be overseen exclusively by bishops, just like the "canonical" suits that dealt with moral offenses. The implications of this mandate are thorny. It is conceivable that in "ecclesiastical" cases concerned with material violations against the earthly church, bishops would be responsible for trying or judging individuals who had broken secular law. This may be precisely the type of activity that Ælfric cautioned against in his discussions of clerical participation in secular justice. Wulfstan presents the judicial defense of the earthly church as a vital episcopal obligation, yet it is likely that "ecclesiastical" cases functioned—and appeared to outside observers—much like secular ones did.

#### ECCLESIASTICAL AND SECULAR COLLABORATION

The overlap between religious and secular cases is reinforced in *De medicamento animarum* by the frequent use of judicial terminology. The text is concerned with those who issue judgments (*iudiciis*), debate and argue pleas (*disputare*), and are involved in lawsuits (*causis, negotiis*). Such legalistic vocabulary is rare in Wulfstan's writings, but here it is not appropriated directly from any Latin source. Rather, *De medicamento animarum* draws from canons dispersed across different collections, adapting a small selection of material concerned with judgments and the role of bishops; much of the legal language appears to be Wulfstan's own addition.<sup>96</sup> In some cases, he significantly alters the context of his sources to encompass judicial matters. When instructing clergymen to avoid earthly engagements, for instance, Wulfstan omits the original canon's exhortation to concentrate on pastoral duties and not domestic affairs; instead, he adds a prohibition against episcopal participation in secular justice.<sup>97</sup> Elsewhere, he expands upon a canon excluding bishops

<sup>95</sup> Morris, "William I and the Church Courts," 460–61; Helmholz, *Oxford History of the Laws of England*, 1:110 and 139–44. See also Cubitt's suggestion that disputes concerning ecclesiastical property were subject to secular rather than ecclesiastical jurisdiction from the ninth century: "Bishops and Councils," 152.

<sup>96</sup> The compiled nature of Cotton Nero A.i is discussed by Loyn, *A Wulfstan Manuscript*, esp. 46–53; Cross and Hamer, *Wulfstan's Canon Law*, 23–30. Some of this judicial language may have been adopted from the *Collectio canonum Hibernensis*, which employs legalistic vocabulary in a section titled "De iudicio": the text is edited by Hermann Wasserschleben, *Die irische Kanonensammlung* (Leipzig, 1885), with this section (book 21) at 62–73. For the *Collectio Hibernensis* as a source for Wulfstanian texts, see Cross and Hamer, *Wulfstan's Canon Law*, 33–34; Elliot, "Canon Law Collections," 146–47. For its broader influence in tenth- and eleventh-century England, see Shannon Ambrose, "The *Collectio canonum Hibernensis* and the Literature of the Anglo-Saxon Benedictine Reform," *Viator* 36 (2005): 107–18. See also nn. 97–98, below.

<sup>97</sup> This passage of *De medicamento animarum* (quoted above, p. 15) is expanded from a clause in the *Collectio canonum Hibernensis*; the same clause was also adapted in Wulfstan's canon law collection *Speculum* 94/3 (July 2019)

from secular judicial deliberation, changing its meaning to forbid laymen from participating in canonical or ecclesiastical suits.<sup>98</sup> Through such revisions—which still bore the canonical authority of their sources—Wulfstan engaged the vocabulary of secular justice in order to delineate exclusive jurisdictions for lay and religious authorities.<sup>99</sup> While secular and ecclesiastical suits might employ similar procedures and draw on a common legal terminology, according to his formulation, they were to be clearly distinguished by their subject matter and personnel.<sup>100</sup>

Why, then, did Wulfstan emphasize collaborative justice so heavily in his laws? If there needed to be a firm separation of secular and ecclesiastical jurisdictions, what was the benefit of the unified assemblies he advocated in *VIII Æthelred* and *II Cnut*? I propose that for Wulfstan, collaboration was most valuable when it came time to sentence offenders and enforce their punishments. While he forbade secular authorities to issue ecclesiastical judgments or assign penance, Wulfstan did expect the clergy to participate in sentencing in secular cases. In his tract *Episcopus*, for instance, he instructs, “Sculon bisceopas mid worulddeman domas dihtan, þæt hi ne gefafian, gyf his waldan magan, þæt ðær ænig unriht up aspringe” (Bishops must establish sentences with secular judges, so that they do not allow any

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tion (also known as the *Collectio Wigorniensis* or the *Excerptiones pseudo-Ecgberhti*). The canon in the *Collectio Hibernensis* reads as follows (with language adapted in *De medicamento animarum* in italics): “ut episcopus nullam rei familiaris curam ad se revocet, sed ut lectioni et orationi et verbi Dei predicationi tantum vacet”; *Collectio Hibernensis* 1.10.b, ed. Wasserschleben, *Die irische Kanonensammlung*, 7. This clause is expanded in Wulfstan’s canon law collection but largely retains the focus and vocabulary of its source, as follows (with language adapted in *De medicamento animarum* in italics): “Et in unica ecclesia, episcopus nullam rei familiaris curam ad se reuocet, sed lectioni et orationi et uerbi Dei predicationi tantum uacet, et uilem suppellectilem ac uictum pauperem habeat, et dignitatis sue auctoritatem fide et per uite meritum querat, et cum apostolis pernuriam patienter sustineat”: Cross and Hamer, *Wulfstan’s Canon Law*, 73, A.17; and compare 125, at B.36. In *De medicamento animarum*, Wulfstan adapts these clauses as “Episcopi quoque nullatenus secularibus iudiciis. aut negotiis: curis . uel causis . se inopportune occupent sed eclesiasticis; Lectioni itaque et orationi et uerbi dei predicationi instantur uacent”: Elliot, “Canon Law Collections,” 1042; Fehr, *Hirtenbriefe Ælfrics*, 252; and see the full quotation above, 15 and n. 65.

<sup>98</sup> This clause (quoted and discussed above, 16 and n. 73) is also adapted from the *Collectio Hibernensis*, which reads as follows (with language adapted in *De medicamento animarum* in italics): “Si episcopus vel scriba presentes sint, statuunt iudicium, quia illicitum est laicis disputare presentibus episcopis aut scribis aut sanctis. Inde Alexander episcopus Hierusalem ad Demetrium regem Grecorum ait: Numquam auditum nec ab aliquo factum sit, ut presentibus episcopis laici disputent”; *Collectio Hibernensis* 21.28, ed. Wasserschleben, 72. *De medicamento animarum* reads, “Alexander quoque ad demetrium regem ait; Numquam auditum uel ab aliquo factum sit: ut presentibus episcopis laici disputent de canonicis uel aliis eclesiasticis causis: sed omnium eclesiasticarum rerum . episcopi curam habeant . et ea uelut deo contemplante dispensent”: Elliot, “Canon Law Collections,” 1042; Fehr, *Hirtenbriefe Ælfrics*, 252.

<sup>99</sup> For canonical authority, see Cross and Hamer, *Wulfstan’s Canon Law*, 30; Austin, “Jurisprudence in the Service of Pastoral Care,” 939–43.

<sup>100</sup> Ecclesiastical courts overseen by bishops were established in late antiquity: see, for example, John C. Lamoreaux, “Episcopal Courts in Late Antiquity,” *Journal of Early Christian Studies* 3 (1995): 143–67; Noel E. Lenski, “Evidence for the *audientia episcopalis* in the New Letters of Augustine,” in *Law, Society, and Authority in Late Antiquity*, ed. Ralph W. Mathisen (Oxford, 2001), 83–97; Cubitt, *Anglo-Saxon Church Councils*, 73–74. The clauses from *Collectio Hibernensis* cited above (nn. 97–98) are attributed to late antique authorities: 2.10.b is listed as a canon of the Council of Carthage, and 21.28 is attributed to Gregory of Nazianzus.

injustice to spring up, if it is within their power).<sup>101</sup> Likewise, in *Cnut 1020*, secular reeves are enjoined to “æghwær min folc rihtlice healdan 7 rihte domas deman be ðæra scira biscopas gewitnesse 7 swylce mildheortnesse þæron don, swylce þære scire biscope riht þince” (govern my people justly everywhere, and judge just sentences with the shire bishops’ advice, and issue them with as much mercy as the shire bishop thinks just).<sup>102</sup> In these clauses, bishops are not told to argue cases or issue decisions in secular suits; rather, they are required to consult with lay authorities to establish appropriate sentences.<sup>103</sup> A driving principle of Wulfstan’s legislation was the need for merciful penalties, which punished an offender’s earthly violation yet did not hinder his eventual salvation. Wulfstan departed from earlier Anglo-Saxon law by issuing predominantly nonlethal (*friðlice*) sentences that enabled offenders to live and repent of their sins, but even when death sentences were unavoidable, he demonstrated concern for the souls of the condemned: he required that final confession be offered to convicts before their execution, and he moved away from decades-old laws that prohibited burying dead criminals in consecrated ground.<sup>104</sup> In this context, Wulfstan’s call for collaborative sentencing offers a further opportunity to ensure spiritual health—not only for the offender, but for the judge who might endanger his own soul through an overly harsh penalty.<sup>105</sup> The bishop’s job in secular sentencing was to temper earthly punishments and bring them in line with Christian priorities.

In religious cases, by contrast, Wulfstan was concerned with collaboration in enforcement, rather than in sentencing. His main focus in *De medicamento animarum* is penance, the medicine of souls for which the tract is titled. The obligations of the clergy are clear: “Confitentibus quoque ac penitentibus omnimodo succurrant: et indifferenter penitentię leges petentibus [*sic*] iniungant” (They should help those who confess, and also penitents, in every way, and objectively impose upon penitents the laws of penance).<sup>106</sup> Wulfstan then describes the range of appropriate penances for sinners. These include devotional activities, like prayers and vigils, but there are also options that affect the penitent materially and physically, including almsgiving, fast-

<sup>101</sup> *Episcopus* 9.

<sup>102</sup> *Cnut 1020* 11. *Cnut* issued this text while abroad, where it was (presumably) composed without Wulfstan’s direct influence; however, the text is preserved uniquely in Wulfstan’s own copy in the York Gospels and, as written, reflects the archbishop’s priorities: see Wormald, *Making of English Law*, 347.

<sup>103</sup> Dorothy Whitelock suggests that the phrase *domas dihtan* in *Episcopus* 9 “probably refers to the sentences imposed in the courts”: see Dorothy Whitelock, Martin Brett, and Christopher N. L. Brooke, eds., *Councils and Synods, with Other Documents Relating to the English Church*, vol. 1, A.D. 871–1066 (New York, 1981), 420 n. 4; and compare DOE, s.v. “dom,” section 1.a.vii. See also Rabin, *Political Writings of Wulfstan*, 63.

<sup>104</sup> Marafioti, “Punishing Bodies,” 50–57. I examine Wulfstan’s approach to unconsecrated burial in greater depth elsewhere: Nicole Marafioti, “Unconsecrated Burial and Excommunication in Anglo-Saxon England: A Reassessment,” *Traditio* (forthcoming).

<sup>105</sup> I discuss earlier examples of this logic in “Earthly Justice and Spiritual Consequences: Judging and Punishing in the Old English *Consolation of Philosophy*,” in Gates and Marafioti, *Capital and Corporal Punishment*, 113–30. Compare the closing line of *De medicamento animarum*, which has bishops “assiduus precibus exorantes . diuine maiestatis clementiam pro salute omnium” (lifting up assiduous prayers to the mercy of the divine majesty, for the health of all): Elliot, “Canon Law Collections,” 1043; Fehr, *Hirtenbriefe Ælfrics*, 253.

<sup>106</sup> Elliot, “Canon Law Collections,” 1042; Fehr, *Hirtenbriefe Ælfrics*, 251.

ing, and “diuersis corporum castigationibus” (various bodily castigations).<sup>107</sup> Although the list is followed by the assertion that “episcoporum enim est omnia iudicia ecclēsiastica rite disponere” (it is right that bishops set all ecclesiastical judgments),<sup>108</sup> the discussion of penances—like other sections of this tract—is marked by legal and judicial rhetoric that would be appropriate in a secular context. Bishops must impose the laws (*leges iniungant*) of penance without bias (*indifferenter*), following correct (*rite*) procedure when they set judgments (*iudicia disponere*). This terminology mirrors the language applied to earthly justice elsewhere in the text, thus creating a shared vocabulary for secular and penitential sentencing. In addition, this diction reinforces the fact that penance was a penalty to be administered from above, by a higher earthly authority, just like punishments for mundane offenses. Accordingly, penitential sentences needed as much enforcement as secular ones. Wulfstan explains, “Quoniam sunt nonnulli qui paruipendunt diuinam doctrinam: ideo oportet eos per seculares potentię disciplinam . a tam praua consuetudine . cohercere et corrigere” (Because there are some who give little weight to divine instruction, it is therefore fitting for them to be coerced and corrected from such perverse custom through the discipline of secular power).<sup>109</sup> Wulfstan develops this point in another Latin text preserved as part of his “commonplace book,” in a discussion of convicted sinners who persist in their misdeeds: “Necesse est ut inuiti pēnas penitentię exsoluant . ne animę pro quibus dominus passus est . in ęterna pēna dispereant. . . . Melius est enim cuique ut coactus ad regnum . quam sponte ad supplicium perueniat sempiternum” (It is necessary that they involuntarily pay the penalty of penance, lest the souls for which the Lord suffered perish in eternal punishment. . . . For it is better for anyone to come coerced to the king than voluntarily to eternal suffering).<sup>110</sup> In this formulation, it was collaboration with lay authorities—in this case the king and, presumably, royal representatives capable of forcing compliance—that gave religious sentences their weight and ensured that penances would be completed. This may have been a particularly pressing issue when “bodily castigations” were prescribed, but Wulfstan was also concerned that lesser penances could too easily be ignored.<sup>111</sup> In *De medicamento animarum*, he urges that secular pressure be applied to those “qui fingunt et dicunt . se habere humilitatem in christo: sed despiciunt obedientiam mandatorum eius . spernuntque predicatorum salutis: et propterea mentiuntur . quia non sunt humiles: sed superbi” (who pretend and say that they have humility in Christ but despise obedience to his commands and spurn salvific warnings. And they lie about these things because they are not

<sup>107</sup> Elliot, “Canon Law Collections,” 1042; Fehr, *Hirtenbriefe Ælfrics*, 251.

<sup>108</sup> Elliot, “Canon Law Collections,” 1042; Fehr, *Hirtenbriefe Ælfrics*, 251. See also above, n. 64.

<sup>109</sup> Elliot, “Canon Law Collections,” 1043; Fehr, *Hirtenbriefe Ælfrics*, 252. In another of Wulfstan’s discourses on penance, this language is applied to individuals who commit incest and homicide: “quos oportet per sēcularis potentię disciplinam a tam praua consuetudine cohercere . qui per salutifera sacerdotum monita noluerint reuocare” (it is fitting for them to be coerced from such perverse custom through the discipline of secular powers, those who did not wish to return through the salvific admonitions of priests): Elliot, “Canon Law Collections,” 1100; Fehr, *Hirtenbriefe Ælfrics*, 245. Compare also *Edward and Guthrum* prol. 2.

<sup>110</sup> Elliot, “Canon Law Collections,” 1100; Fehr, *Hirtenbriefe Ælfrics*, 245. This passage appears in Cambridge, Corpus Christi College, MS 190.

<sup>111</sup> Above, n. 107.



humble but proud).<sup>112</sup> This critique seems especially applicable to individuals who were assigned less conspicuous acts of penance, such as prayer or almsgiving; the absence of bodily mortification, by comparison, might be considerably more difficult to conceal. If Wulfstan's objective was full adherence to Christian law, then even small violations, like evading modest penances, could damage the overall health of the kingdom. The threat of retribution from lay authorities would presumably lead to greater compliance with spiritual directives, thereby securing divine approval. Moreover, reliable secular enforcement would give ecclesiastical justice greater legitimacy, confirming that spiritual atonement was on a par with secular punishments. Although the ignorant—those who “give little weight to divine instruction”—might be unable to see the connection between individual piety and national prosperity, pressure from earthly magnates could secure their compliance.<sup>113</sup> Even if some individuals' understanding of the spiritual benefits was imperfect, or their obedience to the bishop's instructions was grudging, they would nevertheless be compelled to perform the penance their souls required in order to avoid further material punishment.

A final question to consider is who exactly would enact this policy of enforcement. Perhaps the most practical solution was to entrust this responsibility to people who normally enforced secular sentences: the king, local magnates, and their representatives. In *De medicamento animarum*, though, Wulfstan offered another solution: “*episcopi curam animarum indesinenter habeant: et nequaquam seculares curas assumant: sed habeant sub se aduocatos . et prepositos: qui populares causas exerceant et sint semper parati ad resistendam rebellium pertinaciam*” (bishops should constantly have care of souls and by no means assume secular responsibilities; but they should have advocates and surrogates under them, who can enforce the people's suits and always be prepared for the resistance of stubborn rebels).<sup>114</sup> In other words, a bishop is not permitted to enforce judicial sentences himself, but he may employ and supervise underlings who can legitimately act on his behalf in the secular sphere. This is another instance where Wulfstan diverged from his sources. The original canons direct the first part of this rule to bishops, priests, and deacons alike, requiring deposition for any who should participate in secular affairs.<sup>115</sup> Wulfstan's adaptation omits all mention of deposition, addresses this instruction exclusively to bishops, and conceives an administrative hierarchy to represent episcopal interests. Given Wulfstan's formulation, it is not impossible that these surrogates would include lower orders of clergy; it is only bishops who are prohibited from “secular responsibilities.” Yet this instruction could also be directed toward members of the laity, who might act on the bishop's behalf when direct episcopal participation was inappropriate. Such an arrangement is implicit in

<sup>112</sup> Elliot, “Canon Law Collections,” 1043; Fehr, *Hirtenbriefe Ælfrics*, 252.

<sup>113</sup> Above, n. 109.

<sup>114</sup> Elliot, “Canon Law Collections,” 1043; Fehr, *Hirtenbriefe Ælfrics*, 252.

<sup>115</sup> The source canon from the *Collectio Hibernensis* reads as follows (with language adapted in *De medicamento animarum* in italics): “*Episcopus aut prespiter aut diaconus nequaquam saeculares curas adsumant, sin aliter, deponatur*”; *Collectio Hibernensis* 2.27, ed. Wasserschleben, 20. This canon is also adapted as follows in Wulfstan's canon law collection (with language adapted in *De medicamento animarum* in italics): “*Episcopus aut presbiter uel diaconus nequaquam seculares curas adsumat; sin aliter, deponatur*”; Cross and Hamer, *Wulfstan's Canon Law*, 73, A.17; and compare 125, B.37.



Wulfstan's legislation, in clauses delineating how tithes should be collected from unwilling individuals:

Gif hwa teoþunge rihtlice gelæstan nelle, þonne fare to þæs cyninges gerefa 7 þæs mynstres mæssepreost—oððe þæs landrican 7 þæs biscopes gerefa—7 niman unþances ðone teoðan dæl to ðam mynstre, þe hit to gebirige, 7 tæcan him to ðam nigoðan dæl; 7 todæle man ða eahta dælas on twa 7 fo se landhlaford to healfum, to healfum se biscop, si hit cyninges man, sy hit þegnes.<sup>116</sup>

[If anyone does not wish to justly render his tithe, then let the king's reeve and the Mass priest of the minster go to him—or the landowner and the bishop's reeve—and let them take the tenth part to the minster without his consent, and assign to him the ninth part, and divide the eight remaining parts in two, and let the landlord take half and the bishop take half, whether the offender be the king's man or a thegn's.]

In this scenario, the overdue tithe and forfeited property would be collected by some combination of secular and ecclesiastical authorities, including the bishop's reeve—presumably a layman entrusted with protecting episcopal property and overseeing the church's earthly affairs on the bishop's behalf.<sup>117</sup> These individuals seem exactly the type of “advocates and surrogates” Wulfstan envisioned in *De medicamento animarum*, empowered to compel “stubborn rebels” to submit to ecclesiastical rules.<sup>118</sup> Even if bishops were required to distance themselves from the administration of earthly justice and the implementation of material punishments, Wulfstan was clear that their interests needed to be robustly defended by episcopal delegates and secular allies.

## CONCLUSIONS

Much of *De medicamento animarum* is compiled from materials that appear elsewhere in Wulfstan's “commonplace book,” and there is considerable thematic overlap with his other writings.<sup>119</sup> Yet this text represents his clearest discussion of how the clergy—and especially bishops—ought to participate in judicial matters. Fundamentally, Wulfstan's approach was in line with Ælfric's advice: clergy were not to litigate or issue judgments in secular cases because such activity ran counter to their pastoral mission. However, Wulfstan took a more nuanced view of the realities of earthly justice. Rather than requiring clergy to absent themselves in order to maintain their spiritual purity, as Ælfric advocated, Wulfstan recognized a number of circumstances in which the clergy were obliged to participate in secular affairs in order to defend the interests of the earthly church. Such work should be understood as acts of devotion, according to his reasoning, for *De medicamento animarum* instructs bishops to administer their sees “uelut deo contemplane” (as

<sup>116</sup> VIII Æthelred 8 (= I Cnut 8.2). Compare also II Edgar 3.1.

<sup>117</sup> The role of the bishop's reeve in this clause is discussed by Chelsea Shields-Más, “The Reeve in Late Anglo-Saxon England” (PhD diss., University of York, 2013), available online at <http://etheses.whiterose.ac.uk/5534/> (last accessed 31 October 2017), 105–7.

<sup>118</sup> Above, n. 114. For a discussion of advocates in a monastic context, see Charles West, “Monks, Aristocrats and Justice: Twelfth-Century Monastic Advocacy in a European Perspective,” *Speculum* 92/2 (2017): 372–404.

<sup>119</sup> See especially the sources provided by Elliot, “Canon Law Collections,” 1043.

if God were observing).<sup>120</sup> Moreover, where Ælfric focused on keeping the clergy out of secular justice, Wulfstan was just as committed to keeping the laity out of church business. He cited the distance between orders (*distantia est ordinum*) to make this point, presumably drawing on Ælfric's discourse on the three orders of society, which preceded the discussion of secular justice in his pastoral letter to Wulfstan.<sup>121</sup> For Ælfric, these orders—those who work, fight, and pray—were separate: the clergy's role was “bellare uiriliter contra spiritalia nequitia” (to fight strongly against spiritual iniquity), and anyone who undertook secular obligations after ordination “erit apostata” (would be an apostate).<sup>122</sup> The logic of *De medicamento animarum* is driven by principles of ecclesiastical autonomy, more than by religious purity, but the differentiation of ecclesiastical and secular jurisdictions that Wulfstan envisioned was consistent with Ælfric's model.

Wulfstan diverges from Ælfric, however, in his views concerning the appropriate relationship between orders. Ælfric acknowledges interdependence between the three orders—if one fails, the others cannot endure—but firmly delineates each sphere from the others, construing their obligations as mutually exclusive.<sup>123</sup> Wulfstan echoes the language of interdependence in his own discussion of the three orders in his *Institutes of Polity*, and like Ælfric, he situates this discourse immediately before remarks about earthly justice.<sup>124</sup> The kingdom will thrive, according to Wulfstan, if the orders are strengthened

mid wislicre Godes lare, and mid rihtlicre woruldlage: þæt wyrð þam þeodscype to langsuman ræde. And soð is, þæt ic secge: awacie se cristendom, sona scylfð se cynedom; and arære man unlaga ahwar on lande oððe unsida lufige ahwar to swiðe, þæt cymð þære

<sup>120</sup> Elliot, “Canon Law Collections,” 1042; Fehr, *Hirtenbriefe Ælfrics*, 251–52. See above, n. 73.

<sup>121</sup> Elliot, “Canon Law Collections,” 1042–43; Fehr, *Hirtenbriefe Ælfrics*, 252; and see above, 15 and n. 65, for the full quotation. Ælfric's discussion of the orders in his Latin letter to Wulfstan is in Ælfric of Eynsham, *Letter* 2a.14, ed. Fehr, *Hirtenbriefe Ælfrics*, 225–26. Compare also Ælfric's discussion of the three orders in his treatise on the Old and New Testaments, which is followed immediately by a statement concerning earthly justice: he remarks that “se rihtwisa God lufað rihte domas” (righteous God loves just judgments) and cautions against judicial corruption, stating that “se þe Godes þegen bið, sceolde deman rihtlice butan ælcum medsceatte mid soðfæstnysse” (anyone who would be God's thegn must judge justly, with adherence to the truth, without any payment): S.J. Crawford, ed., *The Old English Version of the Heptateuch*, Early English Text Society, o.s., 160 (London, 1922), 72. This theme is discussed by Timothy E. Powell, “The ‘Three Orders’ of Society in Anglo-Saxon England,” *Anglo-Saxon England* 23 (1994): 103–32, at 109–15; Wormald, *Making of English Law*, 458–63.

<sup>122</sup> Fehr, *Hirtenbriefe Ælfrics*, 225. Compare also Ælfric's descriptions of the Three Orders in Walter Skeat, *Ælfric's Lives of Saints: Being a Set of Sermons on Saints' Days Formerly Observed by the English Church*, 2 vols., Early English Text Society, o.s., 76, 82, 94, 114 (London, 1881–1900), 2:120–22.

<sup>123</sup> Ælfric uses the image of a three-legged stool (*stol*) in his discussion of interdependence: Crawford, *Heptateuch*, 71–72; Powell, “Three Orders,” 114–15. Wulfstan adapts Ælfric's imagery, referring instead to a throne, or “king stool” (*cynestol*): Jost, *Institutes of Polity*, 55–57; and below, n. 125.

<sup>124</sup> Of Ælfric's three references to the orders, two are followed directly by admonitions concerning earthly justice; see above, n. 121. The third, appended to his homily on the book of Maccabees in Skeat's edition, is followed by an account of clergy being forced into battle by Julian the Apostate or else imprisoned; Ælfric then reminds his contemporaries that the clergy must not engage in earthly battles. This passage is framed in terms of military activity, but Ælfric's phrasing is similar to the discussion of earthly justice in his letter to Wulfstan: monks must avoid physical fighting like their saintly predecessors, who “noldon ænne fugel acwellan” (did not wish even to kill a bird): Skeat, *Lives of Saints*, 2:124.

þeode eall to unþearfe. Ac do man, swa hit þearf is, alecge man unriht and rære up Godes riht.

[with God's wise teachings and with just earthly law; that will guide the nation for a long time. And it is true what I say: if Christianity weakens, the kingdom will quickly be shaken; and if anyone raise up injustice anywhere in the land or love bad customs too much, then the nation will all come to harm. But let what is necessary be done: let injustice be set aside and God's justice be raised up.<sup>125</sup>]

Ordering society correctly—that is, in accordance with God's will—requires good earthly law, enforced through the righteous exercise of justice; the juxtaposition of this point with an explication of the three orders in both authors' writings confirms how integrally these ideas were connected. Still, Wulfstan did not adopt Ælfric's ideas about exclusivity.<sup>126</sup> Instead, he depicted the cultivation of piety and justice as a shared responsibility in *De medicamento animarum*, despite the distance (*distantia*) that otherwise separated the orders. This difference of opinion may be attributed to the environments in which these authors were working. Writing in a monastic context, Ælfric apparently viewed the issue of clerical participation in the secular world in black-and-white terms, whereas Wulfstan's own episcopal responsibilities required him to grapple with a sizable grey area. As the archbishop's discussions of earthly justice reveal, there was rarely a sharp divide between secular and ecclesiastical interests. Wulfstan decreed that mundane offenses be compensated *for Gode 7 for worolde*, with penances imposed alongside material penalties to redeem the moral failings that inspired misbehavior. Accordingly, if all crimes were rooted in sin, violations of royal law must also be a religious matter. By this logic, most occasions for earthly justice would have required some degree of clerical intervention. Although it was inappropriate for a bishop to litigate or decide a secular suit that had no direct bearing on ecclesiastical matters, it was necessary that he intervene with lay authorities to save the souls involved. Likewise, while the clergy were supposed to avoid secular business whenever possible, they were obliged to defend the rights, property, and integrity of the earthly church. I suggest that Wulfstan regarded such action as an extension of pastoral duties: in addition to saving individual souls, it was incumbent upon the clergy to ensure that the church had sufficient protection and resources to fulfill its mission. While such efforts might be mistaken for secular activity by an outside observer like Ælfric, Wulfstan recognized the complexity of earthly justice and delineated an acceptable role for the clergy within established legal processes.

To conclude this discussion, I would like to return to the idea of dual penalties—the earthly punishments “common to Christ and the king,” whose decline Wulfstan lamented in *VIII Æthelred* 38.<sup>127</sup> This phrase suggests some degree of overlap between penitential and material compensation, but it is unclear how fully these categories converged: could a single penalty serve simultaneously as punishment and penance? Even though his royal laws never prescribe specific penances, Wulfstan

<sup>125</sup> Jost, *Institutes of Polity*, 57–58. See also Powell, “Three Orders,” 115–16.

<sup>126</sup> Above, n. 121. On collective responsibility for wrongdoing and its remedies, see Cubitt, “Individual and Collective Sinning,” 63–66.

<sup>127</sup> Above, n. 33.

seems to have imagined that such a scenario was possible in cases of violation against the church. In VI *Æthelred* 51, he provided a list of appropriate uses for funds acquired by ecclesiastical authorities in cases where “for godbotan feohbot ariseð, swa swa wise woroldwitan to steora gesettan” (money compensation is rendered as penance, as wise earthly counselors established as punishment): such revenue was to be used only to maintain the church and further its mission, “næfre to woroldlican idelan gelengan, ac for woroldsteoran to godcundan neodan” (never to advance worldly vanity, but for a secular punishment to advance spiritual needs).<sup>128</sup> Earthly punishment and religious penance are both satisfied with a common penalty, in this formulation.<sup>129</sup> A similar conflation is evident in clauses that call for payments to the bishop for violations against the earthly church. For instance, I *Cnut* 9 and 10 require monetary fines to the bishop if religious dues are not paid promptly; II *Cnut* 42 requires “altar compensation” (*weofodbote*) to be rendered to the bishop by anyone who abuses a clergyman; and II *Cnut* 58 requires monetary payment to the bishop for violations of his protection. It is never stated whether such penalties were meant to compensate material harm or spiritual corruption, but when read alongside the instructions in VI *Æthelred* 51, it is possible that they were intended to do both.<sup>130</sup>

Nevertheless, while the payment of certain secular fines may have been understood to provide a spiritual benefit, it is improbable that such payments fulfilled all the penitential obligations required by Wulfstan’s laws. In some circumstances, there may have been an expectation that penance would be rendered in a separate process, distinct from the payment of fines prescribed in royal legislation.<sup>131</sup> It could be that the law codes’ side-by-side instructions for punishment and penance were intended for emphasis, in instances of grave malfeasance in both the secular and spiritual spheres (committing homicide in a church, for example). For lesser offenses, by contrast, the penalties mandated by royal law may have created opportunities for additional penitential sentences to be issued. Perhaps offenders were expected to render ecclesiastical fines during the judicial assemblies at which their cases were heard, with the bishop empowered to pronounce a separate penitential sentence as he accepted payment. Or perhaps offenders were instructed to deliver their fines at a later date to a church, where they would be required to undertake

<sup>128</sup> VI *Æthelred* 51. With the bishop’s approval, the money was to pay for prayer, care for the poor, church repairs, teaching, supporting the clergy, books, bells, and religious vestments. These instructions apply to a variety of fines—*wergild*, *halsfange*, *lahslite*—and to large and small payments alike.

<sup>129</sup> For money or property rendered as penance, see, for instance, Fowler, “Handbook,” 29–30.

<sup>130</sup> Monetary payments are often regarded as commutations of penance by modern scholars. However, in his laws Wulfstan does not frame monetary payments as alternatives to or replacements for other forms of penance, and in the Old English Handbook he suggests that financial offering is one of the various forms (“mistlice wisan”) penance could take: Fowler, “Handbook,” 29. For discussions of commutation, see, for example, Fowler, “Handbook,” 14; Oakley, *English Penitential Discipline*, 88–103; Barlow, *English Church*, 268–69; Victoria Thompson, “The Pastoral Contract in Late Anglo-Saxon England: Priest and Parishioner in Oxford, Bodleian Library, MS Laud Miscellaneous 482,” in *Pastoral Care in Late Anglo-Saxon England*, ed. Francesca Tinti (Woodbridge, UK, 2005), 106–20, at 118–19.

<sup>131</sup> Hamilton, “Rites for Public Penance,” 83–87; Cubitt, “Individual and Collective Sinning,” 57–58.

confession and penance in order to complete the process of compensation.<sup>132</sup> I have argued elsewhere that the severe corporal punishments prescribed in Wulfstan's royal law codes had a penitential objective, causing offenders enough suffering to inspire them to reconcile with God before death.<sup>133</sup> I propose here that milder secular penalties, such as fines, served a comparable function: material punishment created an opportunity for the offender to redeem his sins with the church and settle with God through an act of penance, whether or not the payment itself fulfilled this purpose.

Although Wulfstan did not conflate crime and sin in his laws, he did envision a close connection between these categories. According to his legal philosophy, crime was a symptom of more serious spiritual corruption; thus, the ultimate goal of secular punishment was to redeem offenders' sin, even as it kept peace and order in the secular sphere. Because judges were responsible for issuing sentences that were "for Gode sy gebeorhlic ⁊ for worulde aberendlic" (justifiable before God and bearable before the world), it was vital that the clergy be involved in earthly justice, to ensure that spiritual concerns would be addressed correctly.<sup>134</sup> Although boundaries between secular and ecclesiastical jurisdictions helped preserve the purity and focus of the clergy, those boundaries needed to be permeable when it came time to assign and implement penalties, moments at which Christian souls were particularly vulnerable. By having laymen and bishops dispense justice at a common gathering, spiritual and material penalties could be imposed together, backed by the full legal power of secular and ecclesiastical authorities. Participation in trials and deliberations, by contrast, was to be limited to the appropriate personnel, depending on the nature of the case. This approach did not efface the distinction between moral and material offenses. Neither did it legitimize broad clerical participation in secular procedure. Wulfstan's innovation, I propose, was to redefine ecclesiastical involvement in earthly justice as an element of pastoral care.<sup>135</sup> It was the responsibility of the clergy—especially bishops—to ensure that no souls were lost through overly permissive royal law, inordinately harmful punishments, or unfulfilled penitential sentences. It was also crucial, however, that the clergy keep to their appointed place and not be distracted by secular affairs that did not further their pastoral mission: bishops should not "secularibus iudiciis . aut negotiis: curis . uel causis . se . . . occupent sed ecclesiasticis" (to occupy themselves with administration or pleas in secular judgments or lawsuits—only with ecclesiastical ones).<sup>136</sup>

<sup>132</sup> A comparable process for offenders seeking sanctuary is proposed by Trisha Olson, "Sanctuary and Penitential Rebirth in the Central Middle Ages," in *Boundaries of the Law: Geography, Gender and Jurisdiction in Medieval and Early Modern Europe*, ed. Anthony Musson (Aldershot, 2005), 38–52.

<sup>133</sup> Marafioti, "Punishing Bodies."

<sup>134</sup> *II Cnut 2* (= *III Edgar 1.2*).

<sup>135</sup> A similar argument is advanced concerning Burchard of Worms by Austin, "Jurisprudence in the Service of Pastoral Care"; and see also Mary Frances Giandrea, *Episcopal Culture in Late Anglo-Saxon England* (Woodbridge, UK, 2007), 169.

<sup>136</sup> The full quotation is above, 15 and n. 65. Wulfstan offers regulations for other orders of clergy (including monks, canons, and priests) elsewhere in his corpus: see, for example, *V Æthelred 5–9*; Wulfstan, *Canons of Edgar 57–68*, ed. Roger Fowler, *Wulfstan's Canons of Edgar*, Early English Text Society, o.s., 266 (London, 1972), 14–17.

In delineating precise roles for lay and clerical magnates, and in establishing the limits of secular and ecclesiastical jurisdictions, Wulfstan's approach to earthly justice was largely consistent with the stated logic behind the separation of jurisdictions after the Norman Conquest. Like William, Wulfstan sought to institute a judicial structure that would give clergy exclusive authority over Christian souls and insulate the church from secular concerns. This also seems to have been an objective behind Æthelred's pre-Wulfstanian law codes, which removed religious provisions altogether, presumably with the understanding that cases that touched on church affairs or spiritual offenses would be governed by ecclesiastical, not secular, procedure. It is significant, however, that the competing judicial models that emerged in the generation after Edgar's death were each concerned with a detrimental overlap between ecclesiastical and secular justice. The point of contention was how such overlap should be addressed. Where Æthelred's pre-Wulfstanian laws appear to have moved away from Edgar's collaborative model by fully separating ecclesiastical and secular justice, Wulfstan sought to improve upon Edgar's laws by delineating precise jurisdictions for clergy and laymen within a collaborative system.

The problem with Wulfstan's model, I suggest, was that the divisions he outlined were too subtle to be practicable on a wide scale. However sound the theory behind his differentiation of ecclesiastical and secular judicial obligations, it seems unlikely that lay and religious magnates would keep strictly or consistently to their assigned roles at mixed assemblies. Yet even if the boundaries were respected in some cases, these limitations would not necessarily be apparent to outsiders. The precise roles filled by secular and ecclesiastical authorities could be obscured by collaborative deliberation, leading observers—from Ælfric to William—to conclude that there was no substantive difference between these groups or their influence. Moreover, although William's mandate for separate jurisdictions suggests that collaborative justice endured through the Conquest, it is unclear how fully this model adhered to Wulfstan's prescriptions. Judicial privileges were granted to religious authorities with increasing frequency as the eleventh century progressed, indicating that bishops and other high-ranking clergymen had a material stake in the administration of earthly justice.<sup>137</sup> While it is conceivable that ecclesiastics delegated their judicial activities to lay administrators, as Wulfstan advocated, it seems probable (in light of post-Conquest concerns) that at least some members of the clergy were participating in a full range of secular judicial processes. William deemed this approach untenable, and it is tempting to read his initiatives as first steps toward later medieval jurisprudence—especially when viewed in light of twelfth-century conflicts over the jurisdictions of canonical and secular courts in England, or the sharpening division

<sup>137</sup> The scope of these privileges (often indicated, from the mid-tenth century, by the formula *sac 7 soc*) is debated: see especially Patrick Wormald, "Lordship and Justice in the Early English Kingdom: Oswaldslow Revisited," in *Property and Power in the Early Middle Ages*, ed. Wendy Davies and Paul Fouracre (Cambridge, UK, 1995), 114–36; Stephen Baxter, "Lordship and Justice in Late Anglo-Saxon England: The Judicial Functions of Soke and Commendation Revisited," in *Early Medieval Studies in Memory of Patrick Wormald*, ed. Stephen Baxter, Catherine E. Karkov, Janet L. Nelson, and David Pelteret (Farnham, UK, 2009), 383–419. For the increased frequency of such grants from the later tenth century, see Florence E. Harmer, *Anglo-Saxon Writs*, 2nd ed. (Stamford, 1989), 73–79; George Molyneux, *The Formation of the English Kingdom in the Tenth Century* (Oxford, 2015), 175–77; and see also Giandrea, *Episcopal Culture*, 180–86.



between royal and ecclesiastical power that characterized the era of the Gregorian reforms.<sup>138</sup> It is surely significant that Henry II reissued the canons of the 1080 Council of Lillebonne in the 1160s, indicating that William's initiatives were considered foundational in the twelfth century.<sup>139</sup> Nevertheless, despite the rhetoric of innovation in post-Conquest texts, William appears to have revived an earlier model of English justice by restoring the ecclesiastical-criminal division of Æthelred's early reign.<sup>140</sup> Even if this development was inspired by Continental episcopal courts rather than English practice, it ran counter to Wulfstan's judicial initiatives and reimposed the legal model he had argued against, whereby "that which before was common to Christ and the king in earthly punishment" was divided.<sup>141</sup> Still, the need for such a reversal confirms that the judicial model Wulfstan legislated was more than mere aspiration. Although it may have been implemented imperfectly, collaborative justice evidently remained sufficiently prominent in England that it drew royal attention some fifty years after Wulfstan's death.<sup>142</sup> In this context, William's writ should be understood as part of a broader debate concerning the relationship between secular and ecclesiastical justice over the course of the eleventh century.

<sup>138</sup> See, for example, Helmholz, *Oxford History of the Laws of England*, 1:108–18; Maxey, "Ecclesiastical Jurisdiction," 360–61; Charles Duggan, "The Becket Dispute and the Crimonious Clerks," *Bulletin of the Institute of Historical Research* 35 (1962): 1–28.

<sup>139</sup> For the 1080 council, see above, n. 6. Henry's reaffirmation of the Lillebonne canons at a 1162 council in Rouen is described by Robert of Torigni; the text is edited by Richard Howlett, *Chronicles of the Reigns of Stephen, Henry II, and Richard I*, vol. 4, *The Chronicle of Robert of Torigni* (London, 1889), 212; and see the discussion of this passage by Chaplais, "Henry II's Reissue," 629; W. L. Warren, *Henry II* (Berkeley, 1973), 95–96.

<sup>140</sup> Compare Helmholz, *Oxford History of the Laws of England*, 1:58.

<sup>141</sup> Quotation above, 8–9 n. 33. For Continental practice, see Hamilton, "Episcopal Justice"; Hamilton, *Practice of Penance*, 45–50.

<sup>142</sup> Morris, "William I and the Church Courts," 460–61.